

IN THE DISTRICT OF THE UNITED STATES OF AMERICA
FOR THE SOUTHERN DISTRICT OF ILLINOIS

ADELAIDA ANDERSON and JEFF ANDERSON,

Plaintiffs,

v.

Case No. 19-cv-800-SPM

RAYMOND CORPORATION,

Defendant.

Transcript of Jury Trial - Volume VIII
November 10, 2021

Proceedings held in person before
the Honorable **STEPHEN P. McGLYNN**,
United States District Judge Presiding

East Saint Louis, Illinois

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NO.	DESCRIPTION	ID'D	RCV'D
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TRANSCRIPT OF PROCEEDINGS

(Proceedings commenced at 9:08 a.m.)

(Jury enters at 9:08 a.m.)

THE COURT: All right. Please be seated.

Good morning, everyone. The evidence and testimony has been submitted. We're at that stage of the proceedings for final argument. The plaintiff gets to go first. Defense then goes. The plaintiff gets to make a rebuttal argument because the plaintiff has the burden of proof.

So what you're about to hear is argument. And if they argue something that -- or suggest something is a fact that isn't, you should disregard it. You should base your evidence -- or base your decision on the facts of the case as you understand them. They certainly are able to argue what one can reasonably draw from the evidence that you've heard. And this is an important matter, and I'm going to give the lawyers the opportunity to spend not insignificant time making their arguments to you.

So, Plaintiff, ready to proceed?

MR. WARSHAUER: We are, Your Honor.

THE COURT: All right. Defense?

MR. LoCOCO: Yes, Your Honor.

THE COURT: All right. Please proceed.

MR. WARSHAUER: Good morning. My name is Michael Warshauer. And I'm proud to represent Lidy and Jeff Anderson

1 and I'm proud to represent families like it, my friends, my
2 neighbors, people I know, people we all know who work in
3 warehouses. I'm proud of my role in helping make their job
4 safer, and making it more likely that they'll return home to
5 their loved ones whole.

6 What you do matters. I don't know if y'all have
7 noticed this, but every human in this courtroom stands up when
8 you come into this room. This is a big deal to me. The Seventh
9 Amendment of the Constitution of the United States says we have
10 a right to trial by jury. You are part of the constitution of
11 the United States. Judge McGlynn stands up for you. You are
12 unbelievably powerful and important. You can right a wrong.

13 You can make decisions that make warehouses
14 safer, that make factories safer, that make forklifts safer.
15 What we do here protects our friends and families, and their
16 friends and families. You can tell the Raymond Corporation that
17 words are not enough, that action matters. And you can ensure
18 that what they took away through their design choices from Lidy
19 and Jeff Anderson and their family, they have to pay for it,
20 completely and entirely. Not any more. Not any less.

21 Now I told you at the beginning of this case that
22 our focus would be on two design choices. We never wavered from
23 that. All of my testimony that we elicited focused on those two
24 design choices. First one was a choice that allows a forklift
25 to keep moving when the operator is out of it, and the second

1 one is there's no guard over the wheel. And I told you that
2 what we would do together is decide whether those were
3 unreasonable dangers.

4 And what the judge is going to tell you, as I
5 mentioned in my opening and as I mentioned when we were choosing
6 the jury, for us to establish that it's an unreasonable danger,
7 we just have to prove that it's more likely true than not that
8 their design choices were unreasonable and that their design
9 choices caused Lidy and Jeff's injuries.

10 Now when we think about more likely true than
11 not, you can think of the scales of justice, just enough to tilt
12 a reasonable mind one way or the other. But a fellow who taught
13 me how to try cases, my first boss, if you will, lived in
14 Alabama. And you could imagine that everything he had had a big
15 "A" on it for Alabama, so all of his analogies were football.
16 And he said, "Mike, you just have to get the nose of the ball
17 over the 50-yard line." "So, Mr. Birch, we don't have to score
18 a touchdown?" "That's not the law." "Mr. Birch, we don't have
19 to get a first down?" "That's not the law. We just have to
20 tilt the scales ever so slightly." We did that in this case.
21 And then we scored first downs, and then we got long passes, and
22 then we scored touchdowns, over and over.

23 The forklift keeps moving after the driver is out
24 of the compartment. That's a danger. There's no guard over the
25 wheel to prevent it from crushing an operator's foot. That's a

1 danger too. I reminded you in the opening that one of the
2 things I wanted you to bring to this courtroom is your common
3 sense. Does it make common sense that Lidy would lose control
4 for no reason and then jump off a forklift for no reason,
5 backwards? Does it make common sense that an entire industry
6 does it one way, but Raymond's the right one? Does it make
7 common sense that when there's a written standard on how to do
8 something, Raymond gets to do it different from everybody else?

9 Now the law gets -- allows you to make
10 inferences. Nobody watched this happen. There's no video.
11 Sometimes there's video in warehouses and we can see it happen.
12 We can see the loss of balance and fall out and watch this
13 forklift run over them. But in this case, what we have is
14 inferences. We know there were cracks. We know cracks cause
15 shaking. We know shaking causes balance responses. We know
16 balance responses cause people's feet to move. We know when
17 people's feet move, one of the things they might do is move too
18 far to the left automatically and unknowingly. And we know that
19 if someone is falling to the left, they'll grab controls to try
20 to salvage their lives. And we know that will occur with the
21 forklift. Those are all reasonable inferences from these facts.

22 So what we're going to have before you is this.
23 Yours will be smaller than this one. It's called the verdict
24 form. And what you have to do is read these questions as a
25 group, consider the evidence, what we're going to do in the next

1 few minutes, and then answer them. So the first one is, "Do you
2 find that the forklift manufactured by the Raymond Corporation
3 that was being operated by Adelaida Anderson when she was
4 injured on July the 29th of 2017 at the FedEx warehouse at
5 Effingham, Illinois, contained an unreasonably dangerous
6 condition as claimed by the plaintiffs that existed at the time
7 it left the control of the Raymond Corporation?"

8 Couple things. We don't have to prove that both
9 things were dangerous. Either one is good enough, and I told
10 you that at the beginning. And the other is, "at the time it
11 left control." That's stipulated. There were no changes. So
12 we're -- those are the sort of rules as we consider this. And
13 what the judge is going to tell you is that when you use the
14 expression "unreasonably dangerous," the risk of danger inherent
15 in the design outweighs the benefit of the design when the
16 product is put to use that is reasonably foreseeable. It's
17 reasonably foreseeable she will drive over cracks. It's
18 reasonably foreseeable that she will go down and find herself
19 out for a variety of reasons. As I said in the opening, it
20 could be any reason from a bee sting to a heart attack. This
21 machine needs to stop or bad things will happen. So that's the
22 definition of unreasonably dangerous.

23 Do they have a good reason for the danger? I
24 think we all know it's dangerous if a machine continues to move
25 when you're out of it. Did they have a good reason? We all

1 know that if there's an unguarded pinch point, a wheel that is
2 spinning in a location where somebody might be, that's a danger.
3 But do they have a good reason? We're going to talk about that.

4 Another part of the instruction the Court is
5 going to give you talks about -- and you'll have this language
6 back with you -- "Was it unreasonably dangerous in one or more
7 of the following aspects." Remember, it doesn't have to be
8 both. One or more. So we have to identify two: An operator
9 compartment design that did not apply the brakes when
10 Mrs. Anderson's left foot went out of the compartment, and/or --
11 really could be "or" -- a steer wheel design that did not have a
12 guard to prevent Mrs. Anderson's foot and leg from being run
13 over by the forklift.

14 And of course Jeff Anderson claims damages and
15 we're going to talk about that in a moment.

16 The Raymond Corporation not only denies this --
17 you know, it's one thing for Raymond to say, "Look, we tried to
18 make a safe product." I understand that. Manufacturers don't
19 want to admit their products are dangerous when they have 31,000
20 of them out there with the same danger for sure. But, you know,
21 it's another level of badness in my opinion, it's another level
22 of wrong, to then blame the plaintiff, to blame the person you
23 injured, with no facts, no reasonable inferences from facts.
24 Just to say, "Well, it's her fault. Let us go."

25 But let's look at the what the actual facts are.

1 These are the facts I promised in my opening that we would
2 prove, and I think we did. I said that we would introduce you
3 to the B56.1 Standards, and I said that these would be
4 identified as things that bound the Raymond Corporation. And
5 indeed Mr. Kerila said, "Yes, we have to comply with standards
6 that use the word 'shall.' We have to do that."

7 But you know what he didn't say? You never heard
8 him say they did comply with 7.20.2. Never heard those words.
9 And what's interesting is, Mr. Rogers told us how he was a
10 member of the committee and he's been working for Raymond since
11 the '80s, but even he wasn't willing to go that far and say this
12 forklift complies with that standard. He said, "Oh, it complies
13 with these standards." We were here to talk about 7.20.2.
14 Everybody knew it. But he couldn't say the words because it
15 wouldn't have been true.

16 You know, we didn't hear it from Mr. Rogers,
17 Mr. Kerila. That's okay. But we didn't even hear it from
18 Dr. Rhoades. Dr. Rhoades doesn't have a long-term relationship
19 with these people. He didn't say it either. But what's
20 interesting about Dr. Rhoades, he wasn't even asked to look at
21 safety. "What were you asked to do?" "Comfort." Did I say
22 comfort was an issue in this case? That's what they wanted to
23 talk about.

24 And we didn't hear it from Dr. Rodowicz. She's a
25 bright woman. She's been doing this a long time. Can't even

1 remember how many times she's testified or her company's
2 testified in left-leg amputation cases. She couldn't say it
3 either.

4 So how do people comply with this standard? This
5 is what Raymond built, 157, and this is the way other
6 manufacturers comply. They put a pedal under the operator's
7 left foot, and that pedal applies the brake. Standard doesn't
8 say it has to apply the brake. But what we know is an entire
9 industry has decided that the right way to comply with 7.20.2 is
10 to put a brake under the left foot. Entire industry.

11 Now why do we know that's relevant, what the
12 entire industry does? Because remember, when I asked Mr. Rogers
13 and Mr. Kerila, "Who gets to decide whether you comply with
14 these standards or not?" And they both said, as did Dr. Meyer,
15 if I recall, they all said, "Well, the manufacturer gets to
16 decide." I said, "There's no outside entity that gets to
17 decide?" "No." "No government entity?" "No." "There's nobody
18 who comes and checks that forklift before you ship it to see if
19 it complies with B56.1, 7.20.2?" "No."

20 So where do we look to see how everybody else
21 interprets that and how they interpret it? We look at what
22 other manufacturers do, and they universally apply left-foot
23 brake. Don't you know if I was wrong on that point, don't you
24 know if I was wrong on that point, Raymond would have come and
25 said, "We're not the only ones. Look, there's the ABC Company

1 and the XYZ Company." They didn't do that because that fact
2 doesn't exist. They are alone in their choices, and we know the
3 consequence of that choice.

4 The Raymond Corporation's design allows their
5 forklift to keep moving after the operator is out. And the
6 Crown, Unilever, Nissan, Mitsubishi, Jungheinrich, Linde,
7 everybody, stops that forklift the fastest way possible when
8 that operator gets in danger. And they didn't challenge that
9 evidence at all.

10 You know, later on in the case, as the case moves
11 forward, Dr. Rhoades talked about something about a feature
12 brochure, and it reminded me, maybe there's other ways you can
13 get this thing to stop. Because remember, our complaint is it
14 keeps moving after you're out. So what did they tell us about?
15 They told us about this laser system that they've had. Now
16 what's interesting is they've had this laser system since 1980.
17 It's a patented device. They just decided not to put it on
18 because they don't want to acknowledge that people might get
19 off. What they want to do is say, "Hey, we gave you a book.
20 You're on your own." That's not enough. That's not enough.

21 That patent says, in the abstract, this can be
22 designed to apply the brake. Since 1980, they've had that, and
23 they chose not to do it. And they chose not to do it the rest
24 of the industry does. What they chose to do is put comfort so
25 far ahead of safety that they have blinders, even the

1 possibility that a human being will be a human.

2 So the next question we have is, did it matter?
3 The violation's kind of easy with respect to the pedal. The
4 next question is, does it matter? So let's take a look at what
5 happened. What you're seeing now is this 10-foot arc. Mike
6 Rogers told us this. He and Dr. Meyer were basically in
7 agreement as to this last 10 feet. There was a curve.
8 Mr. Rogers even said if someone falls out, if they pulled on
9 that -- on the -- I'm sorry, as they fall to their left and pull
10 on that control, they could cause this very curve. So that's an
11 explanation for the curve. The best explanation for the curve
12 is, as she's falling out, struggling for a second and a half or
13 so, struggling to keep this thing from getting her, as any of us
14 would, as any human would. This is what happened. The forklift
15 came and got her.

16 At the end of this, you'll see red. That's the
17 15 inches that matter. If the forklift never gets to that
18 15 inches, it never gets to Lidy. How do we know this? Well,
19 Dr. Kerrigan and Dr. Rodowicz didn't agree on everything,
20 although they did agree on the important stuff, which is the
21 left foot was crushed by the wheel. They did also agree on
22 this. Lidy didn't have an interaction with that wheel until
23 right before the forklift came to stop.

24 You'll recall Dr. Kerrigan says, "I can tell from
25 the rotation, it could not have been more than 15 inches."

1 Well, I put 15 inches here. That's the most it could have done.
2 And I asked Dr. Kerrigan, "How many revolutions?" She said, "I
3 don't know." She knew. But if she said what Dr. Kerrigan said,
4 the problem is, she places Lidy down here at the very end, and
5 if the forklift didn't get to her, why is she here? Because her
6 goal was to convince you that the forklift was going to get to
7 Lidy no matter what and that Lidy intentionally stepped off this
8 forklift. Didn't leap off. Stepped off backwards. "Oh, my
9 gosh, I'm in an emergency situation that I could have stopped by
10 plugging or I could have stopped by putting the brake or I could
11 have stopped by steering. But no, I'm not going to choose those
12 obvious choices. I'm going to step off backwards into the path
13 of this forklift." That's Dr. Rodowicz's testimony.

14 But let's think about what would have happened if
15 the brake had been applied. Not at the very end, because we
16 know that the brake was applied 6 feet from the end, 5 feet of
17 stopping and 1 foot to get it started; right? That little delay
18 that Rogers told us about. So we know that's -- takes 6 feet.
19 What if she has the shaking, the foot comes out, and the brake
20 starts back there? Where does that forklift end up? There's
21 never an interaction. There's never a danger. She's protected.

22 There's a violation, and there's a cause of the
23 injury caused by that violation, shown by the mathematics and
24 testimony of not only Dr. Meyer who we brought to you -- and by
25 the way, let me just mention, I brought Dr. Meyer because I

1 think he's the smartest guy in the room, and I wanted somebody
2 who would give us that kind of independent thought. And I
3 brought Dr. Kerrigan because I think he's one of the smartest
4 guys in the room. He wasn't a professional witness. You know,
5 he said, "I'm not -- I'm just not -- you know, that's curious to
6 me. I'm not -- I just don't know how it can happen that way."
7 It wasn't, "It must happen this way." Real scientists, real
8 people who have an open mind, recognize that things are
9 complicated. And I brought you Dr. Jeka to explain that loss of
10 balance can occur, not because somebody gets a violent force
11 against them, but because our automatic system, a system
12 Dr. Rodowicz didn't even understand, can just cause us to move
13 our feet. We move our feet all the time. We don't even think
14 about it. And I wanted you to understand that.

15 Let's go to the next thing. Remember, I said
16 we're going to look at two design issues. What's the other
17 design issue? The other design issue was the unguarded wheel.
18 Simple fix. Simple fix. Put a guard there. And what was their
19 reason for not putting a guard there? Was it a reasonable
20 reason? I mean, sometimes people have a reasonable reason for
21 danger. You know, what was their reason? Well, gosh, in the
22 morning, it might slow you down when you do your inspection, to
23 have to look over that guard through that hole. I mean, you
24 might do that. But then he went on to say, "You know, you just
25 really have to look at the wheel and drive it. You don't feel

1 if there's a chunk." So that's not even a real reason.

2 The next reason was, well, it might make it a
3 little less convenient to change the wheel. If you change the
4 wheel every hour, that might be an argument. The wheels go
5 months at a time without being changed. And all you do is
6 unbolt the guard.

7 The third reason is, well, the wheel comes out a
8 little bit. That's their design choice. I'm not retrofitting
9 their machine. This should have been thought about before this
10 machine left the factory in 2014. It's a simple fix.

11 But how do we know it would have made a
12 difference? Well, Dr. Kerrigan told us it would have made a
13 difference. But you know, yesterday -- I hope you guys were
14 watching the same slideshow I watched. Yesterday, Dr. Rodowicz
15 showed us some slides. And what she told us was, "First thing I
16 did is I scanned the forklift, then I scanned the shoe, then I
17 scanned the human, then I put them together, and I learned some
18 things." You might recall, I said, "Dr. Rodowicz, are those
19 things really accurate?" And you might have been wondering,
20 "Why is Mr. Warshauer trying to prove her drawings are accurate?
21 I thought he was supposed to be attacking her." She said yes.
22 Okay. I believe that Exponent and its 800 professional
23 engineers can probably do a pretty good computer simulation with
24 a laser scanner. I have no reason to believe that it's not
25 accurate, but she confirmed it's accurate.

1 So what do we learn? You'll recall these two
2 slides. What she did is, the computer could look at her
3 surrogate -- that's what we're going to call the woman here --
4 can look at the surrogate from one side, and then it could
5 switch and look at the surrogate from the other side; right? So
6 what we're doing here is one photograph is from this side.
7 That's on the left. And the other photograph on the right is
8 from the right rear of the forklift; right?

9 What did we learn? These are sequential and
10 they're matched. When the -- she tells us that the right foot,
11 which you can see in the upper left picture -- she tells us that
12 the right foot hit the ground first. Okay. The right foot is
13 interacting with the forklift at the exact same level the guard
14 would be there.

15 Remember where the guard is? The guard is at the
16 exact same level as the skirt of the rear of the forklift. So
17 we know that what we see on the black is the same as where we
18 want to put the guard. So we see over to the right, that right
19 foot has been hit by the apron. The next frame down, the left
20 foot's in danger because there's no guard. These feet are the
21 same size. They belong to the same person. And what do we see
22 on the right side? We look in there and we go, "Wait a minute.
23 The forklift on the right-hand side, that right foot, which
24 wasn't injured, is being pushed backwards by the skirt of the
25 forklift." And then you go to the very last photograph. That

1 left foot has been eaten by this forklift wheel and that right
2 foot is not even harmed. And you can see in the background the
3 wheel and you can see a gap between the toe and the wheel.

4 What does that teach us? It teaches us if there
5 had been a guard, if there had been a guard, this foot would
6 have been pushed out of the way. So was that an unreasonable
7 danger? That would be for you to decide. I think the answers
8 to those questions would be yes.

9 Next question you'll get, "If your answer to
10 Number 1 is yes, do you further find that the injuries sustained
11 by Adelaida Anderson on July 29th of 2017 while operating the
12 Raymond forklift were proximately caused by the unreasonably
13 dangerous condition of the forklift as she claimed?" One of
14 those conditions. And again, the answer is yes.

15 The next thing you're asked to do is, "If your
16 answer to Number 2 above is yes, do you find that Adelaida
17 Anderson failed to exercise ordinary care for her own safety in
18 operating the Raymond forklift as claimed by the Raymond
19 Corporation when she was injured on July 29th, 2017?"

20 We have a woman of impeccable skills who had a
21 response to an automatic balance adjustment by her body. That
22 wasn't a conscious choice by her. No one said she drove too
23 fast. No one said that she handled the curve improperly. No
24 one said that she didn't steer properly. What they simply say
25 is this: She jumped off. That's their entire case. She

1 stepped in front of the forklift for no reason. If you think
2 that that doesn't make sense, then the answer to this question
3 is no. She had nothing to do with the cause of her injuries
4 that weren't her fault.

5 The next question that you'll be asked is
6 Number 4. You're going to skip Number 4 because she doesn't
7 have a percentage of fault. And you're going to skip Number 5.

8 And that brings us to what we're going to talk
9 about in a moment: Damages. But before I get there, I want to
10 ask you, did the Raymond Corporation help us answer these
11 questions by focusing on what matters, or did they try to
12 distract us? Let's think about their case. Did it answer the
13 questions, or were they distractions?

14 First thing they told you, "We're just a small
15 mom-and-pop company owned by George Raymond in upstate New York
16 in the Finger Lakes district." Mr. Kerila has worked there his
17 entire life, and when asked, "Isn't it true that you're actually
18 not a mom-and-pop corporation, but owned by one of the largest
19 industrial conglomerates in the world?" He goes, "I don't know
20 who owns the company." You know, if you can't believe people on
21 the little stuff, why believe them on the big stuff?

22 Then he told us about a seven-step process to
23 create the forklift. They knew when they presented that
24 evidence to you and spent an hour of our lives talking about
25 this process, that evidence of good care, of their care in

1 creating the product, is not a defense. It doesn't matter how
2 careful they are. All that matters is whether the product at
3 the time it left their factory and was used by Lidy was
4 unreasonably dangerous. Did it have one or either of those, one
5 or both of those defects? They talk about a seven-step process,
6 but they don't even collect their accident reports. They don't
7 call customers and say, "How many people have suffered left-leg
8 injuries? We're interested in this." They can't even tell us
9 how many of our family and friends and neighbors have suffered
10 similar injuries. They're missing the eighth stage, which is,
11 make sure your product is safe once it's in the marketplace.

12 They distracted us by showing us a video of
13 forklifts going off loading docks. They knew that wasn't
14 relevant to our interest. I actually asked. "Does this make it
15 more likely if we do -- if we comply with 7.20.2 like the rest
16 of the industry? Or have a guard? Will it make it more likely
17 to go off a loading dock?" No. It's a distraction.

18 The forklift is comfortable. They actually paid
19 Dr. Rhoades \$91,000 to prove it was comfortable. We never said
20 it wasn't. And they didn't even video it. What are they
21 hiding? Distraction.

22 They said there are no forces that would force
23 someone to lose their balance. We never, ever said that she was
24 forced, as if the thing came to a dead stop at 20 miles an hour
25 and ejected her. We never said that. What we said is, in

1 foreseeable reasonable use, it's expected people will make
2 balance adjustments or fall out from bee stings or heart attacks
3 or maybe stupidity. And they said that just never happens
4 because there's not enough forces. Remember what Dr. Jeka said?
5 Forces don't matter. What matters is what our spinal system is
6 thinking is necessary to keep us.

7 I've been moving around constantly. My hands
8 move, my feet move. I don't think about that. It just happens.
9 We all know that. None of us think how to ride a bike.
10 Remember Ms. Boone? Said Lidy said she slipped. And remember
11 what else? Ms. Boone, this was -- Mr. LoCoco asked the
12 question, "You've never lost your balance, have you?" Remember
13 she said, "Oh, yes, sir, I have. Oh, yes, sir, I have."
14 Distraction.

15 They showed you videotapes that proved one thing,
16 that a forklift that is in perfect condition that is driven in a
17 manner that doesn't actually hit the cracks offers a pretty
18 smooth ride. Lidy's forklift was worn out, but you know, they
19 know that. They know forklifts get old. You know, I got a
20 forklift -- a truck I drove up here, and I'm fortunate to have
21 two vehicles. One is electric. It's an electric car like
22 lawyers have. I go over those things on the highway. I don't
23 feel them. That truck shakes, particularly when it's empty. I
24 remember an F150 I had. Loved that truck. Probably should have
25 replaced the shocks when it had 200,000 miles on it, but

1 everything rattled your teeth.

2 We know that's the way things act when they get
3 old and that's why their experiment doesn't work, and it ignores
4 Lidy and it ignores Ms. Boone and it ignores all the other
5 people who said when you use forklifts at this warehouse, they
6 cause shaking. Distraction.

7 Wood was on the floor. She was thrown out. You
8 know what, if that happened, I'm fine with it. That forklift
9 still should have stopped and it still should have had a guard
10 and we still wouldn't be here if it had either of those. But
11 Mr. Rogers, remember I asked him, "Why were we talking about
12 wood?" We spent ten minutes on the wood. He goes, "Well, it
13 doesn't have anything to do with this case." It's a distraction
14 to get you off your game. A distraction.

15 It's Mrs. Anderson's fault. And I asked both
16 Mr. Rogers and Dr. Rodowicz, "Is it important to consider all of
17 the facts?" And Mr. Rogers says, "Yeah." I said, "Well, did
18 you consider this statement?" "I didn't consider that." "Did
19 you consider her experience and training?" "I didn't consider
20 that." I asked Dr. Rodowicz, "Oh, my gosh, did you consider her
21 expertise, her awards for safety, well trained, it was an easy
22 path, cracks that cause shaking, witness statements?" And she
23 goes, "Oh, I wasn't even aware that someone had said she
24 slipped." Didn't even consider it, but yet was able to come to
25 a conclusion. Don't you know she had that fact?

1 But you see, if she put that fact into the
2 equation, it's a different answer. So what do you do? Throw it
3 out, pretend like you never heard of it. She ignored the fact
4 that it could have stopped and easily steered away. There was
5 no reason in the world for Lidy Anderson to jump out there
6 unless she was falling. She would never have jumped out. You
7 know at the end of the day, what they're doing is -- the Raymond
8 Corporation doesn't have the guts to actually say it. But what
9 they are doing, they are looking at this woman and they are
10 saying, "Lidy Anderson, you are a liar."

11 So that brings us to, how do we answer this
12 question? That leads us to this question, the most important
13 question. You know, I would easily go over the bar with you and
14 help you answer the question, is it their fault, did they -- are
15 they unreasonable? That's easy. Coming up with numbers for a
16 human life and how it's changed? That's really hard work. And
17 that's going to tax you and you're going to argue about it, but
18 I want you to keep this in mind. See, justice is not like
19 coffee. Cup of coffee, a half a cup is still a cup of coffee.
20 Half a cup of justice is really no justice at all.

21 These are the numbers that we thought about:
22 \$1,500,000 for disfigurement, \$2 million for pain and suffering,
23 \$2 million for emotional distress -- I'm sorry -- \$3 million for
24 emotional distress. Past medical expenses were stipulated to.
25 That's a number that's easy: \$870,776. Medical expenses in the

1 future, that's what Life Care Planner Klosterman helped us
2 understand. And don't you know, if her numbers were not right
3 and accurate, they would have come up with a witness to
4 challenge them. That's \$3,014,062. And I understand all of her
5 numbers were conservative. And I actually -- I will tell you I
6 dropped the ball. I disappointed myself for not insisting on
7 prosthetics that will change her life, the best you can get.
8 And Mr. King told us those were sophisticated and we know
9 they're more expensive, and I didn't force these people to do
10 that, and I'm sorry about that. But this is the lowest it can
11 go. She has one leg.

12 Past earnings are \$246,000.86. Future lost
13 earnings -- and that's already been reduced, they've already
14 done that for us -- \$727,162. We're not asking for past
15 caretaker expenses. We're not asking for caretaker expenses in
16 the future. That's included in the life care plan. And the
17 total of these numbers is \$13,358,086.

18 If your answer to Number 2 was yes, then you're
19 going to check yes here. Number 8, you're going to say yes.
20 "Do you find that the injuries sustained by Jeff Anderson for
21 loss of consortium have value?" I get a cold and I want my wife
22 to take care of me. This is a man who sadly is facing his last
23 months. His wife can't take care of him. That's a hard loss.
24 I'm on the road and I get upset and I call my wife and just --
25 "Cool me down. I had a bad day in trial today. Just give me

1 some support." She's always there. She's always there for me.
2 And Lidy, this wife who he met and fell in love with --
3 remember, I thought it was funny. "I wanted a good Catholic
4 girl." Well, he found one, and they had a beautiful child. And
5 they've taken that away from him. And I don't have a clue how
6 to come up with these numbers.

7 \$200,000 for past lost suffering -- past lost
8 services, \$500,000 for what he will miss in the coming months,
9 \$300,000, all the things a wife provides, and the total of that
10 is a million dollars.

11 "We the jury find for the Raymond -- find for the
12 Andersons and against Raymond." And you will check that box,
13 and each of you will sign it. I get a chance to come back and
14 we're going to talk about this a little more. But when you
15 consider the argument you're about to hear, what I hope you will
16 keep in mind is whether it answers those questions or whether
17 it's a distraction. Because if it's a distraction, we have no
18 choice but to fill these numbers out with numbers that represent
19 full, fair, and complete justice, not any more, not any less.
20 That's what we'll ask for in this case. Thank you.

21 THE COURT: All right. Ladies and gentlemen,
22 it's my custom -- when I'm giving the attorneys substantial
23 amount of time to argue their case, it's my custom to allow you
24 to take a break between the arguments, so let's take a
25 ten-minute recess. We'll come back and we will hear the

1 defendant's closing argument.

2 (Jury exits at 9:52 a.m.)

3 THE COURT: Mr. Warshauer, I have your rebuttal
4 at 17 minutes.

5 MR. WARSHAUER: Thank you.

6 (Recess from 9:52 a.m. to 10:07 a.m.)

7 (Jury enters at 10:07 a.m.)

8 THE COURT: Thank you. You may be seated.

9 All right. That break was a little longer than
10 we anticipated, because not surprisingly, we encountered some
11 technical difficulties. So now I'm told everything is back to
12 where it should be and we're ready to go.

13 Mr. LoCoco?

14 MR. LoCOCO: Thank you, Your Honor.

15 May it please this Honorable Court, Mr. and
16 Mrs. Anderson, Counsel, may it please you, members of the jury.

17 I know it's been a long trial, a really long
18 trial. And I know you've been very patient and you've paid
19 attention, and on behalf of Raymond, and frankly the Andersons,
20 I want to thank you for your attention. Your time isn't
21 voluntary; you were summoned here, but your attention and your
22 patience is. And I'm proud to be here representing the folks
23 back at Raymond who are designing, manufacturing, and selling
24 lift trucks that our society needs.

25 Now I mentioned it's been a long trial and it's

1 good that it's almost at an end. Our job is almost over.
2 That's when your job takes center stage. And Mr. Warshauer and
3 I obviously disagree about a lot of things, but as a lawyer
4 who's been doing this for 35 years, Mr. Warshauer about the
5 same, there is nothing more precious to me than our jury system.
6 So many places around the world don't have our jury system. It
7 was written into the Constitution in the 1780s, 1770s, and we
8 still have it today. And there's something about this system
9 where we come to you as citizens to say, "We've got a
10 disagreement. We disagree about something. And we ask you to
11 resolve it." So we're putting this case in your hands. As much
12 as this is Mr. and Mrs. Anderson's day in court, this is
13 Raymond's day in court. We trust you. We trust the jury
14 system.

15 I mentioned that this has been a long trial. I
16 was thinking about that last night, and I was reminded of
17 something that happened, oh, about 13 years ago now. I've got
18 eight children. They're all grown now. My youngest is 23. But
19 back when she was about 10, I was trying a case. It took even
20 longer. It was a three- or four-week trial. And I called home
21 one night about two weeks in, and Martha answered. And I
22 said -- and she answered the phone, and I said "Hi, Martha."
23 She said, "Who is this?" Which was not a good way to start. I
24 then said, "Well, I'm the guy who buys you treats, goes to your
25 soccer games, helps you with your homework, takes you to the

1 park." And I hear the phone drop, and I hear her yelling to my
2 wife, "Mommy, Grandpa's on the phone." So I was thinking about
3 that last night. I kind of miss those days. But it's been a
4 long trial, and we're at the end now.

5 The evidence has all been admitted. All the
6 witnesses have testified. All the exhibits have been shown to
7 you. After we complete the closing arguments, Judge McGlynn
8 will instruct you on the law, and then it's time for you to do
9 your job, your duty, your responsibility to render a true
10 verdict in this case, a verdict that's consistent with the law
11 and the evidence, a verdict that is consistent with the oath you
12 took as jurors, a verdict that is consistent with common sense.
13 I mentioned that in opening statement; Mr. Warshauer mentioned
14 that in opening statement.

15 Based on the evidence in the case and the law
16 that Judge McGlynn gives you, the only possible result here is
17 for you to answer that first question on the verdict, no. This
18 is not a defective product. It is not unreasonably dangerous.
19 There's no defect in this lift truck. When we got together for
20 opening statement last week Tuesday, I guess, I spoke at the end
21 a little bit about the burden of proof. In the opening
22 statement, you can't say a whole lot about things like that so I
23 just mentioned it. I want to focus on that for a moment.

24 You know, it's pretty easy to file a lawsuit in
25 our system, and I guess that's the way it should be. You get a

1 lawyer. I guess you don't even need to get a lawyer. You write
2 out a complaint. It can even be handwritten. You file it.
3 There's a filing fee. And away you go. Complaint's filed. You
4 can sue somebody. But here in this courtroom, over the last two
5 weeks, this is where the rubber hits the road. This is where
6 the person bringing lawsuit, these lawyers here at this table,
7 have to meet the burden of proof.

8 You know, the law calls it a burden for a reason.
9 The law doesn't call it a task or a chore or a nice thing to do
10 on a cool autumn day. It's called a burden. And it's
11 traditional for Plaintiff's Counsel like Mr. Warshauer to say,
12 "You know, those scales of justice, it's just got to tilt ever
13 so slightly in our direction." If I were in his shoes, I'd say
14 that too. If I had put on the case that they put on, I'd be
15 saying that, because they don't have any support for their
16 claims here.

17 They certainly don't have any testing. All three
18 of those expert witnesses they brought said they tested nothing.
19 All three of those witnesses had done nothing in the area of
20 forklift trucks ever. And on the second question, "Did the
21 brake system or the lack of a guard on the steer tire cause
22 Mrs. Anderson's injuries?" they showed you nothing. Nothing.

23 You know what we saw? Dr. Meyer finally showed
24 one drawing, and he changed his testimony. I read it to him.
25 When he -- when I took his deposition on the brake design, I

1 said, "You can't say that your suggested change would have made
2 any difference here?" And he said, "It could have made a
3 change, could have made a difference, but I need more
4 information." And on redirect examination, he changed his
5 testimony. Not during direct, not during my cross, but on
6 redirect, they realized they had no one to say the brake pedal
7 design would have made a difference here. So he gives an
8 opinion that the brake pedal design would have made a difference
9 without any support whatsoever.

10 You know, the law has taken -- the law in our
11 country still uses a few legal -- few Latin phrases, legal
12 maxims. And I'm going to use one this morning, because it
13 really fits in this case. It's something called ipse dixit. I
14 don't even know if I said it right. But it basically means
15 "just because I say so," and that was Dr. Meyer's evidence for
16 why a pedal under the left foot would have made a difference.
17 "Just because I say so." And I'm going to read some testimony
18 to you a little later where he says "I didn't think I needed to
19 do anything more." And that's an insult to you as jurors.

20 Dr. Kerrigan said -- Dr. Kerrigan didn't say
21 anything about the causation issue with regard to the pedals.
22 And on the steer tire guard, they brought you nothing again. It
23 was Dr. Kerrigan this time with the ipse dixit. "Because I say
24 so."

25 Dr. Jeka, the balance expert, no experience with

1 forklift trucks, none; no testing, although he's got that huge
2 lab at the University of Delaware. He could have constructed
3 something. No testing. You know what he said? "I didn't think
4 I needed to do anything." Again, an insult to you as jurors.
5 "I got a lot of good credentials. I get to say it, so you
6 should believe it." That's not how it's supposed to work here.
7 That's not what's meant by meeting your burden of proof.

8 Mr. Warshauer calls all the evidence we brought
9 to you a distraction? Really? We're the only side that brought
10 you any science. The work that Dr. Rodowicz did, you noticed
11 they didn't ask her any questions about the actual work. They
12 didn't challenge her analysis. Not one little bit. You've seen
13 procedure close-up for what happens in a trial. We had jury
14 selection, we had opening statements, Plaintiff's case,
15 Defendant's case.

16 And then I want to focus on something that
17 happened yesterday, because it was so quick, it's easy to miss.
18 We rested. I said, "Raymond rests their case subject to the
19 exhibits." Judge McGlynn turned to Mr. Warshauer and says, "Any
20 rebuttal case? Any rebuttal evidence?" And you know what they
21 put in? A patent, which we never even challenged what's in the
22 patent. I'm sure Mr. Warshauer just misspoke that the patent is
23 actually issued in 2007, not 1980. But that was their rebuttal
24 case. Nothing else.

25 Dr. Meyer's up in Chicago. They could have had

1 him drive down here, get back on the stand, and tell you every
2 way that Mr. Rogers was wrong, every way that Dr. Rodowicz was
3 wrong. They have nothing -- they had no rebuttal case to give
4 you because they couldn't challenge the science. Their case is
5 all suppositioned in speculation. Was the hand pulling on the
6 handle? There's no evidence of that. Was the hand pulling on
7 the tiller? There's no evidence of that. They brought you no
8 rebuttal case, because they couldn't rebut the science that we
9 brought you, which was not a distraction. And I will not
10 apologize to you or to the other side that we brought you real
11 science. You deserve that. This is a serious case, and as I
12 said, it's Raymond's day in court as well.

13 So I mentioned the burden of proof. The
14 plaintiff hasn't even come close. Not even close. And we're
15 going to talk about some of those details.

16 I said in my opening statement that this case was
17 about one thing: Who or what is responsible for the injuries
18 suffered by Mrs. Anderson back on July 29, 2017? We proved to
19 you that it's not the design of this lift truck. We proved to
20 you that it was how Mrs. Anderson operated this lift truck. And
21 I -- I want to focus on two things with respect to that. And I
22 want to talk about the accident itself for a second.

23 First of all, Mr. Warshauer gets up in closing
24 argument, at the very end of his discussion of the liability
25 side of the case, and he makes this inflammatory allegation,

1 we're calling Mrs. Anderson a liar. I've done that exactly one
2 time in 35 years, call a plaintiff a liar. We are not calling
3 Mrs. Anderson a liar. Why did we put the wood evidence in? Why
4 did we put in -- why did we put in this medical record that
5 talks about Mrs. Anderson saying that the forklift jerked and
6 threw her off? Because we wanted to call her a liar? No. Why
7 did we talk about the wood? Why did we put in our -- talk about
8 a record that said that it tipped over and fell out? For two
9 reasons.

10 First of all, she has this terrible, terrible
11 accident. She's not thinking about lawyers. She's not thinking
12 about lawsuits. She's not couching her words. She's in pain.
13 You are going to hear whatever was popping into her head. And
14 in a lot of things, Mrs. Anderson didn't know what was going on,
15 which is why Dr. Rodowicz had to come in here and work backwards
16 from the injuries.

17 Mrs. Anderson had this terrible accident. She's
18 at her place of employment. She knows she's seriously hurt.
19 Think of the panic in someone who's in that circumstance. Am I
20 going to get blamed? Is this my fault? And putting that aside,
21 once your leg has to be amputated, I psychologically can't take
22 the blame for that. So it makes -- so it makes no sense to
23 claim that we're saying that she's lying about it. What we're
24 saying is she doesn't know, and it's their burden to tell you
25 what happened.

1 We knew some facts. We knew that she had these
2 right-shin lacerations. Dr. Kerrigan didn't even focus on that.
3 We're going to come back to that. We knew about the problems
4 that -- tears in the shoes. What accounted for that? We knew
5 that she had gotten caught in the steer tires, but we didn't
6 know how. Even Dr. Kerrigan, by the way, has Mrs. Anderson
7 facing the back of the compartment. So Dr. Jeka's here, he says
8 she felt some balance problem, and she went to broaden her base
9 of support. Well, that doesn't explain how she ends up over
10 here.

11 What else did we know? Anyway, what I was trying
12 to show you was the OSHA photographs, the OSHA photographs,
13 where we saw that truck a foot from the vertical post. We
14 didn't say that Mrs. Anderson had no reason for getting out of
15 that forklift. She shouldn't have gotten out of the forklift.
16 If she had stayed in the forklift, even if she had collided with
17 that vertical post, she would have been safe. But she -- as
18 Dr. Rodowicz explained, the truck was going counterclockwise to
19 where that vertical post, and she jumped out, trying to squeeze
20 herself between the back of the truck and the vertical post to
21 not get hit. And she didn't make it, and that's how -- that's
22 how her left foot got into those wheels. Again, even
23 Dr. Kerrigan says that her left foot got into the wheels facing
24 the back of the forklift. How does that happen if you're just
25 doing a compensatory step?

1 Let's talk about Ms. Boone. Ms. Boone came here
2 voluntarily to testify. She wasn't under subpoena. She had
3 been a work friend of Mrs. Anderson. She met with Mr. Warshauer
4 a month ago for lunch. She talked to Mr. McCoy about a year ago
5 during -- on the phone and they recorded the statement. Her
6 statement was read to you. She says absolutely nothing in the
7 statement the day of the incident about losing balance.
8 Nothing. Even when she was on the stand, she didn't say that
9 Mrs. Anderson reported losing her balance. On the stand, she
10 said she slipped. But there's nothing in this statement about
11 losing balance. I told you in opening statement, medical
12 records, OSHA investigative report, FedEx Supply Chain
13 investigation, nothing in there about losing balance.

14 I asked Ms. Boone about her recorded statement
15 with Mr. McCoy. He never asked her about loss of balance, this
16 thing that is so important to their case. He never asked her
17 about it? Well, he didn't ask her about it in the recording.
18 If it was that important, we would have heard about it. So the
19 first time that we hear about losing balance in this case is
20 kind of the same thing that Mr. Kerila told you. Mr. Kerila was
21 asked questions, charged questions, loaded with innuendo. You
22 know, "Do you know how many people have had left-foot injuries,
23 left-leg amputations from losing your balance?" You saw no
24 evidence, just innuendo. And what did Mr. Kerila say? "No one
25 ever complained about our truck having a problem with balance

1 until you asked me questions in a deposition." This is a
2 lawyer's theory. They're good lawyers. "Hey, we can construct
3 a case around losing balance, because if you do that, then I can
4 bring in Dr. Jeka and I can excuse Mrs. Anderson's conduct."

5 So the first time we hear about losing balance in
6 this case is when I took Mrs. Anderson's deposition. She had
7 very poor memory of the incident. And I'm not criticizing her
8 for that. But she was -- but she did say, "I went over cracks.
9 The forklift shook. I lost my balance. And the next thing I
10 knew, the forklift had run me over." I don't care what other
11 questions were asked. That's all she was -- she remembered.
12 That's what she was prepared to say. "Where were your hands?"
13 "I don't remember." "When did your left foot come off the
14 platform?" "I don't remember." "When did your right foot come
15 off the deadman pedal?" "I don't remember."

16 One thing we do know is, that brake worked. That
17 truck stopped. That brake worked. And we're the ones who
18 proved to you that whether the brake's under the left foot or
19 the right foot, we'd still be here, because a left-foot brake
20 would have not made any difference, given the timing. And I'm
21 going to come back to that.

22 What else did Mr. Kerila say about this issue of
23 losing balance? No one ever, no one in field testing, no one in
24 the prototype testing, no one in the comments back in their
25 whole design process of the 4250 ever said they had balance

1 problems. And why is that? Well, it makes perfect sense. The
2 truck is made to accommodate people so they feel secure and
3 can't lose their balance. You've got a slip-resistant pad.
4 You've got two handles. You've got this back pad with this left
5 hook, you know, the hip holster, the hip hook to keep you in the
6 compartment. You've got a canted floor, a tipped floor, left to
7 right, and back of the forklift into that corner. So you are
8 secure.

9 So this literature that Dr. Jeka told you about
10 was people standing like this. And even that, Dr. Rodowicz
11 explained, people weren't losing their balance when they were
12 hit with a 1g load, and this truck with the floating floor
13 wasn't getting anywhere near that, whether it was braking or
14 not. Mr. Kerila also told you that we -- that Raymond designed
15 the brakes so that it stopped as quickly as you could without
16 sliding the tires, because then it would take longer to brake.
17 But you can't stop a 10,000-pound forklift like that. I don't
18 care what foot is on the deadman pedal.

19 They didn't know how her feet actually came out.
20 Dr. Kerrigan didn't explain it. Dr. Meyer didn't explain it.
21 Dr. Jeka, closest he came was when I asked him about this
22 compensatory step. That doesn't get you into the wheels. And
23 none of these guys, they're all guys, none of these guys did any
24 testing. None of them. None of them.

25 Dr. Rodowicz showed you that based on the

1 geometry of the truck, the facility, the medical records and the
2 injuries, the testing that she and Mr. Rogers completed, they
3 all prove that Mrs. Anderson could not, should not have lost her
4 balance. They're the only ones who brought you...

5 So Mr. Warshauer gets up in his closing argument
6 and he says that Mr. Rogers tried to avoid the cracks? They're
7 all through the video. Look, you can look at all three of
8 these. For some reason, it's not working through the system.
9 But he came through here, he came through here, he came down
10 here. There's cracks everywhere. And what did we get? We
11 got -- we got those plots that showed there just aren't enough
12 forces there to affect somebody's balance. We brought you that
13 science. He calls it a distraction. A distraction? They
14 brought you nothing. They say "Just because our guys say it, it
15 must be true." Ipse dixit.

16 Dr. Meyer: "I went to MIT." You know, when I
17 was -- my first day in law school, first day, we're all nervous.
18 I went to the University of Wisconsin. I had a professor for
19 civil procedure who had been teaching for 40 years, and they
20 always gave him a big truckload of brand new law students. He
21 sits down. He's not talking about civil procedure. He's
22 talking about being a lawyer and relaxing. And I remember to
23 this day him saying, "Just remember, even Harvard has a bottom
24 half of the class." And I thought about that over and over
25 again, and it came to mind when I was thinking about Dr. Meyer

1 saying that he went to MIT. I don't know where he was in his
2 class. But MIT to the best of my recollection certainly has a
3 bottom half of the class. From a scientific perspective, his
4 testimony was an insult. He brought you nothing.

5 Remember I was asking him about this issue of
6 causation? Can I have the document camera? So this is a rough
7 draft of the transcript. Our court reporter does a great job,
8 but I'm just giving you that disclaimer. But this was his
9 testimony. I was asking him about the fact that he hadn't given
10 a causation opinion at his deposition, hadn't give it on direct
11 examination. You didn't say that your pedal design would have
12 made a difference.

13 So I said, question: "You didn't say it's more
14 probable than not. You said it's possible, didn't you?"
15 Answer: "I said -- I'm saying right now, it's more likely than
16 not, had a brake been under the left foot, it would have
17 prevented the accident."

18 Then I go to his deposition, page 99, line 22.
19 Tells me "I'm there." The question: "You need more data in
20 order to make a final determination about the pedal
21 configuration; correct?" Answer: "Yeah. I think at this
22 point, all I can say is that the pedal configuration could have
23 prevented, not necessarily that it would have prevented."

24 "Did I read that correctly?" "Yes."

25 And then I ask him for his analysis. It says he

1 doesn't know what I'm asking for. Then I clarify the question,
2 and he says, "I think we did that diagram yesterday.

3 Mr. Warshauer showed it again today, that shows if Mrs. Anderson
4 came out of the operator compartment and a brake was applied,
5 she would never get to the point where the brake actually -- the
6 forklift actually ran over her foot."

7 It's this drawing. He didn't even bring this to
8 the courtroom with him. He showed it to you in his -- he did
9 this in his redirect. You deserved that.

10 On top of that, let's be clear about what he had
11 to say -- well, let me finish this section. "You have nothing
12 to show the jury that supports the opinion you just gave?"
13 Answer: "I think this exactly supports the opinion I just
14 gave."

15 Question: "So a handwritten drawing that you
16 gave last afternoon, that's it?" Answer: "I don't think
17 anything more is necessary."

18 Mr. Ipse Dixit, Mr. Monday Morning Quarterback,
19 someone who's never played the game and tells everybody later
20 how it should be played. Mr. Warshauer gets up and says, "Well,
21 Dr. Meyer told you everybody else does it the right way. Left
22 foot under the -- left-foot pedal." Actually, that's not what
23 Dr. Meyer said. Dr. Meyer said nobody does it the right way,
24 that the whole industry has this screwed up. He wants a brake
25 under both feet. Well, in this case, in Anderson v. Raymond, he

1 wants a brake under both feet.

2 A month ago in a case against Crown, that's not
3 what he said. In that case, he said "I don't like Crown's
4 left-foot brake pedal. They need to switch these up. The
5 sensor, which doesn't apply brake, has a one-second delay, needs
6 to be under the left foot and the brake needs to be under the
7 right foot." Oh, my God. Raymond's got, according to him, a
8 right-foot brake pedal. That's not going to work here, so he's
9 got to switch back when he gets here. Maybe he'll switch again.
10 No one has two brake pedals. No one. No one. Because you
11 can't risk inadvertent application of the brake.

12 What else did we get from Dr. Meyer on this
13 issue, loss of balance? He said this. "Other than
14 Mrs. Anderson -- you said people are falling out. Other than
15 Mrs. Anderson, have you ever seen anyone else fall out of a
16 4250?" Answer: "No."

17 You know, Mr. Warshauer mentioned that we have
18 31,000 4,250s that have been made. 31,000. He told you several
19 times that this subject forklift had 11,000 hours on it, about
20 4,000 hours a year. That was a lot. That's nowhere near the
21 average. Say, it's only 2,000, times 31,000. That's over 60
22 million hours of use in one year. And the 4250's been out for
23 ten years. 60 million hours of use in one year. And that was
24 one accident. One too many, absolutely. But you heard about
25 Mrs. Anderson's accident. You didn't hear about someone else

1 losing their balance and falling out. 60 million hours of use.
2 This is a safe product.

3 Getting back to the pedal design that Dr. Meyer
4 wants. Well, as I said, a month ago, this is his testimony.
5 All right. Question: "And what do you want to see happen?"
6 Answer: "What I want to see is essentially a reversal of that,
7 so that the present sensing switch is now on the left side for
8 the left foot and the right foot controls the brake."

9 Different case, different manufacturer, different
10 jury, different theory. You actually deserve better than that.

11 How am I doing?

12 THE COURT: You've got -- you're at 30 minutes.

13 MR. LoCOCO: Okay.

14 Mr. Warshauer said in his closing argument that
15 we -- we just said words; right? On how Mrs. Anderson was
16 supposed to protect herself in this accident. Words aren't
17 enough. Well, on their expert theories, I guess words are
18 enough, because that's all we got out of them. And he held up
19 the operator's manual. We didn't just say, "Here's your book,
20 Mrs. Anderson. There's training materials." She admitted that
21 she knew she needed to stay in the compartment to stay safe.

22 And then you heard from Mr. Kerila and
23 Dr. Rhoades all the safety features on this truck that do
24 exactly what needed to be done here. Keep yourself in the
25 compartment while it's operating. She was headed toward a

1 collision with that vertical post. She should have stayed in
2 the compartment. She should have taken her feet off of the
3 deadman pedal. Mr. Warshauer spent all this time saying she had
4 mad skills as a forklift operator. I never heard that term.
5 Maybe she did. That doesn't mean Mrs. Anderson didn't make a
6 mistake. She made a mistake. She made a terrible mistake.
7 That doesn't make her a bad person. She's not.

8 Mr. and Mrs. Anderson, I don't know them very
9 well, but you get to know Plaintiffs in a case a little bit.
10 And you can tell they are salt-of-the-earth people. This is a
11 terrible tragedy. No one's happy about it. And everyone feels
12 sympathy for them. But Judge McGlynn is -- another instruction
13 you're going to hear is that sympathy can't dictate your
14 decision here. It's got to be justice. It's got to be based on
15 the evidence.

16 So we brought Dr. Rodowicz here, and she went
17 through in painstaking detail how this accident happened. She
18 explained the places where Dr. Kerrigan was wrong, that there's
19 no way that Mrs. Anderson got caught by the outside edge of this
20 wheel because it wouldn't explain the degloving injury. She had
21 to be between these two steer wheels. And she showed you that
22 with her model foot and then with the rest of her analysis.

23 She then went to the trouble of digitizing a
24 forklift, digitizing the racking, digitizing the CT scans of her
25 bones, digitizing a surrogate. So in the computer space, the

1 computer space, she could explain to you what happened here.
2 And again, they didn't ask them -- ask her -- they did not ask
3 Dr. Rodowicz one question about this analysis, other than what
4 Mr. Warshauer talked about in his closing argument, other than
5 the guard issue, which I'm going to -- I will come to.

6 So she told you about the right-shin lacerations.
7 How are those accounted for? Well, she told you how they're
8 accounted for. She told you about the tears in the shoe and the
9 analysis she made of the shoe. She told you about digitizing
10 the truck. This is all to scale. She went out and found
11 someone same height and weight as Mrs. Anderson to get some
12 measurements. You know, this is not a 6-foot-5 person at the
13 time of the accident. This is someone who, as I recall, is
14 5-foot-3. She had enough space in that compartment to stay safe
15 and to get nestled into that back pad. And Mrs. Anderson
16 testified that she always operated with her back against the
17 back pad. And she did that day.

18 I want to show you this video. I think we got it
19 working now. Okay. This is one of Mr. Rogers' runs. He's
20 going over cracks.

21 (Video played.)

22 MR. LoCOCO: You could see him there. He's going
23 over cracks here. He's going over cracks in the aisle. I have
24 no idea how Mr. Warshauer gets up in front of you and says
25 Mr. Rogers was avoiding the cracks. And what's really rich

1 about that statement is that they did nothing to try and figure
2 out which cracks she actually went over, what those cracks would
3 do. Yeah, this warehouse has a lot of cracks, but this is a
4 10,000-pound forklift with huge wheels, and that floating floor
5 that was designed to help dampen out the ride for an operator
6 like Mrs. Anderson.

7 What did we learn from Dr. Rodowicz' analysis?
8 We learn -- and she did this in a series of three slides from
9 different views -- Mrs. Anderson right before the injury was
10 facing the back of the forklift, that her left foot got in
11 between those two steer wheels, that her right leg sustained
12 injury, those lacerations on the shin, that the shoe ultimately
13 got drawn into the wheels, but the foot got free; right? And
14 she also told you there's no way a foot -- even Dr. Kerrigan
15 said this -- would stop a 10,000-pound forklift. Once the shoe
16 came off, her foot was also free. There's another view of this.

17 As long as I got this up, I want to circle this
18 right now. I'm going to talk about the steer guard in a few
19 minutes. But Mr. Warshauer got up here and said, you see, you
20 see, if the guard had come down to that level, her foot would
21 have been saved? Really? A 10,000-pound forklift, 5 tons, that
22 isn't going to be stopped for the foot? She wouldn't have been
23 injured? Even Dr. Kerrigan disagrees with that. Dr. Kerrigan
24 said, "Yeah, I think if the guard's there, it might have
25 eliminated -- it would have eliminated or mitigated her injury,"

1 but he said she could have been killed. She could have been
2 seriously injured. And that's just common sense.

3 Again, these three slides -- and it's not -- you
4 got to keep in mind that things are moving; right? The truck's
5 moving toward the post. She's moving away from the post. So
6 it's easy to get up here and try and make fun of this analysis
7 and say, "Why is she standing in front of the -- in the back of
8 the truck?" Well, again, Dr. Kerrigan says that's how she was
9 standing. The truck's moving, she's moving, and her foot gets
10 caught before she can move out of the way.

11 And Dr. Rodowicz' conclusion is this: That her
12 foot came out, went over, and went down. These arrows are for
13 the left foot. This is a complex volitional movement. It's
14 not, "Oh, I want to get a compensatory step to broaden my base
15 of support." This is a volitional move that got her foot in
16 that position.

17 Dr. Rodowicz told you that Ms. Anderson -- that
18 there were no outside forces acting on Ms. Anderson to cause her
19 to lose her balance or for her foot to come out of that
20 compartment the way we see it here. There's nothing that would
21 account for her to be ejected. There's nothing that would
22 account for her to lose her balance. She had this complex
23 action, and that Mrs. Anderson was responsible for not keeping
24 herself in the compartment until the truck came to a stop, which
25 even Mrs. Anderson said she knew she needed to do that to avoid

1 injury, and that she could be seriously injured if she didn't.
2 This evidence, this reconstruction by Dr. Rodowicz, is
3 completely un rebutted. We didn't hear from Dr. Kerrigan again.
4 It's un rebutted. And this part of it wasn't even questioned
5 yesterday.

6 One other thing we learned is that in doing the
7 surrogate study -- remember these plots? They're all under --
8 all the ones in the middle, you know, they're all under 0.1g.
9 Remember this? Dr. Rodowicz said, you know, they've got this
10 theory she was pulling on the handle, she was pulling on the
11 steer tiller. There's no evidence of it, mind you. We heard
12 "if, if, if, if" throughout their case. So Dr. Rodowicz asked
13 the surrogate to "Try and put yourself in Dr. Kerrigan's stated
14 position, hands on the controls, left foot on the outside of
15 this wheel." And you heard Dr. Rodowicz say the surrogate
16 couldn't do it. Maybe somebody 6-foot-5, but not someone who's
17 5-foot-3.

18 Now are we suggesting to you that Mrs. Anderson
19 intended to hurt herself? Of course not. She made a mistake.
20 Most -- we all make mistakes. Most of the time, we get away
21 with them. You know, I'm going too fast, I shouldn't have.
22 Turned too quick, shouldn't have. But you get away with it.
23 Unfortunately, this is one of those things where she didn't
24 survive it. It's a bad result. But that doesn't mean that
25 there's anything wrong with this truck.

1 All right. I want to talk about the design a
2 little bit more, and specifically these defects. Dr. --
3 Mr. Kerila was here to talk about the design process for two
4 reasons: One, as evidence that they didn't screw this up. They
5 knew what they were doing. They've been designing trucks for
6 decades, and this 4250 design project went through the same
7 steps, all seven of those steps we talked about. I'm going to
8 get to the eighth step in a second that Mr. Warshauer's
9 suggesting. All seven of these steps -- even Dr. Ipse Dixit,
10 Dr. Monday Morning Quarterback, Dr. Meyer agreed that there's a
11 design process: Concept, dedicated -- detailed design, bench
12 testing, prototyping, field testing, design refinement, and
13 other steps. Even he agreed with that.

14 So why'd we put that before you? One, to show
15 you that this design came about using an effective process, and
16 two, because Dr. Meyer said "I didn't get past concept. I
17 didn't get past concept." He's designed nothing. He hasn't
18 shown you two pedals. He hasn't even reversed the pedals on the
19 Crown. He's done no testing to show how it would have made a
20 difference. Nothing. He's done no steer tire guard.

21 You know what we got for that? We've got
22 Mr. Warshauer on his computer putting a strip there. On the two
23 pedals, what did we get? We got Mr. Warshauer animating
24 something, not Dr. Meyer. What did we get? Mr. Warshauer
25 animating, using our scan, the scan of the forklift. Today in

1 closing argument, you saw something that had never been shown
2 before in the courtroom, him moving that forklift along the
3 path. Did his experts do that? No. Mr. Warshauer. You know
4 what? In courtrooms, the lawyers would love to be the
5 testifiers. Why get all messy with witnesses? But that's not
6 how we do it. You deserved better than that.

7 What else did we learn? We learned there isn't a
8 single product in the field that does what Dr. Meyer wants.
9 There isn't a single product that has two deadman pedals. There
10 isn't a single product that has two brake pedals. Not a one.
11 All those names that Mr. Warshauer put up, they couldn't point
12 to one that has two pedals. Not one.

13 What else did we hear? Mr. Warshauer says, "What
14 about the standard?" 70.20.2. Well, Mr. Rogers said in his
15 opinion this truck meets the standard. All of it. He's the
16 only guy who's a member of the committee. And we heard
17 Mr. Kerila tell you that they go through their safety design
18 review line by line in the standard to make sure that the truck
19 meets those standards. And all that line says is that means
20 have to be provided to disconnect the travel circuit when the
21 operator gets out of the truck. This truck does that. That
22 standard doesn't say means have to be provided for the brake to
23 come on. That's what happens here when you get out of the
24 truck. The brake comes on. It just says turn off the travel
25 circuit so that you can coast. That's their big evidence.

1 So Dr. Meyer has two theories: Two pedals,
2 left-foot deadman pedal and a right-foot deadman pedal, and a
3 steer guard. And as I said earlier, a month ago he gave the
4 opposite. Remember I said, "You really believe your testimony
5 here, Dr. Meyer? You really believe it? You really believe
6 that people are going to get hurt?" There's 31,000 trucks out
7 there. If this was such a bad problem, people would be falling
8 out left and right. Because this is a design defect case.
9 Every single one of them has the same design problem.

10 And what else? I then asked him, "Have you
11 written anybody?" Remember what he said? He said "I wrote
12 OSHA." And then I reminded him, I asked him at his deposition,
13 "Did you write anybody? You really believe these opinions? Did
14 you tell anybody except us? Did you write OSHA? Did you write
15 FedEx?" By the time he got to trial, he had written OSHA. You
16 know why? Because he's been doing this for a long time. He
17 knew I was going to ask him again, and he didn't want to be
18 embarrassed.

19 Like I said, it's easy to file a lawsuit. It's
20 easy to sue somebody. It's easy to find somebody with a Ph.D.
21 to come in and ipse-dixit the case. "Just because I say so."
22 That's what you got from the plaintiffs, at \$485 an hour for
23 Dr. Meyer, \$500 an hour for Dr. Jeka. Remember, I'm the one who
24 had to ask those questions.

25 THE COURT: I don't know what's wrong with this

1 chair. Sorry about that.

2 MR. LoCOCO: That's okay.

3 485, \$500 an hour, for nothing. No work. I'd be
4 embarrassed too. He simply talked.

5 Mr. Kerila told you that Raymond goes outside
6 when they need to. Dr. Rhoades did this whole analysis of the
7 compartment, talked about how operators are stable in there.
8 Mr. Warshauer turns this whole project into comfort. He asked
9 Dr. Rhoades that at least twice. Dr. Rhoades said comfort is a
10 part of safety. If you're not comfortable, you're going to get
11 fatigued, and then you're going to make mistakes.

12 So we provided reams of testimony about how this
13 compartment is designed, how it was developed, how it was
14 designed to keep Mrs. Anderson and every other operator in the
15 compartment. They don't lose their balance. You heard about
16 Mrs. Anderson and that's it.

17 Now I want to talk about -- oh, Mr. Warshauer
18 brought up this Operator Compartment Sensor System, OCSS, the
19 laser option that Raymond has been making available for years.
20 Made it available to FedEx on this truck. They didn't buy it.
21 Now are we criticizing FedEx for not getting it? No. It's a
22 training tool, and it's got nothing to do with this case,
23 because even if those lasers had been in place, Mrs. Anderson
24 still gets hurt, which is where I'm heading to now, this issue
25 of causation.

1 You know, it's easy to sit in your office in
2 Chicago, pontificate about how everybody else should design
3 products. Dr. Meyer has never put his name on a product. He's
4 never had to risk coming into a courtroom to have a jury judge
5 him. He's making \$485 an hour, thank you very much, criticizing
6 the works of others.

7 Now on the brake pedal under the left foot --
8 let's just not even talk about two pedals. Put the pedal under
9 the left foot. Did they show you any science to prove that it
10 would have made a difference here? None. They showed you that
11 drawing at the very end of Dr. Meyer's testimony and said,
12 "Well, if the left foot had been on a pedal, it would have
13 stopped not as far back." Did they show you where? Did they
14 show you where? Just because you're moving the point of rest
15 doesn't mean that her foot's not going to get caught. Just gets
16 caught earlier in the scenario.

17 And how do we know that's what was going to
18 happen? Mr. Rogers' analysis and Dr. Rodowicz' analysis, they
19 looked at it two different ways. So this is Dr. Rodowicz'
20 analysis. They had the surrogate do a compensatory step. We've
21 got to find out how far can somebody of Mrs. Anderson's stature
22 broaden their base of support if they're trying to get a firmer
23 base of support. And they came up with 4.3 inches, 4.3 inches
24 as the average step.

25 And what did Dr. Rodowicz tell you? That at

1 3 miles an hour, that truck hits the left foot in 0.08 seconds,
2 80 thousandths of a second, less than a tenth of a second. At
3 4 miles an hour, it hits in 0.06 seconds. At 5 miles an hour,
4 which is the speed that Dr. Meyer gave us, it's 0.05 seconds, 50
5 thousandths of a second. A blink of an eye is a tenth of a
6 second. So she puts her foot down, no brake in the world is
7 going to stop that truck before it hits her.

8 What did we learn from -- I'm sorry, that was
9 Dr. Rodowicz. What did we learn from Mr. Rogers? He went
10 through a more -- an analysis with more steps. And what he
11 showed is that at 3 miles an hour, it takes another 13 and a
12 half inches for the truck to stop once her foot hits the ground.
13 So let's say 4.3 inches is too short. Maybe it's a foot. She
14 still is going to get hurt. At 4 miles an hour, it's
15 24.2 inches, 2 feet. She is going to get hurt even with a
16 left-foot deadman pedal. And it's their burden to prove that
17 that left-foot pedal would have made a difference in this case.
18 They didn't even come close. They didn't even try. Dr. Meyer,
19 "I just get to say it," Dr. Ipse Dixit.

20 On the steer tire guard, no one has that. Every
21 single manufacturer of this style truck has a steer tire
22 opening, and it's not for inconsequential reasons. You've got
23 to do a daily inspection. You put that on, people are going to
24 take it off. And then you're also making it more dangerous for
25 technicians because you can't jack the truck up high enough to

1 get a wheel out. And they didn't show you a design. Not one.
2 And they certainly didn't show you how it would have made a
3 difference here. And Dr. Rodowicz showed you this picture too.
4 They didn't bring that picture to you to say, "Oh, see, she
5 wouldn't have been injured." 10,000-pound piece of equipment.
6 "Maybe we can get the jury to believe this. Maybe."

7 So when you get to the verdict --

8 THE COURT: Five minutes.

9 MR. LoCOCO: Five?

10 So when you get to the verdict, the first
11 question is, as Mr. Warshauer said, "Do you find that this
12 forklift contained an unreasonably dangerous condition?"
13 Obviously no. They haven't proved it. They haven't even come
14 close. "Was it a cause?" Even if somehow you said yes to the
15 first question, the answer is no, and then you're done. You all
16 sign the part of the verdict that says "We find for Raymond."
17 You sign all your names and you're done. It's that simple.
18 That's what the evidence shows.

19 Few other things I want to mention. Now you
20 notice I used almost my time on the issue of who's responsible,
21 because Mrs. Anderson was seriously hurt, she was damaged. Now
22 I do want to say just a couple of things about damages, not
23 because I think you're going to get there, because I don't, but
24 because the numbers that we talked about weren't tied to
25 anything that you could get your arms around. They were

1 millions, because that's what lawyers do.

2 There's an old cliché. "Ask for the moon, you
3 might get a few stars." The kind of numbers that Mr. Warshauer
4 was talking about here are the moon, the stars, and a few
5 planets. So common sense. Common sense. Money is worth the
6 same thing in here as it is out in the real world. Lawyers go
7 to seminars. "How can I ask for a lot of money without sounding
8 like I'm asking for a lot of money?" That's what was going on
9 here.

10 I just have a few final comments and then I'm
11 going to sit down. This is the last chance that I have to say
12 anything on behalf of my clients. As you know now, Plaintiffs
13 go first and they get to have the last word. They go last. And
14 that's just the way the rules are. Somebody has to have the
15 last word. They have the burden of proof. When I finish,
16 Mr. Warshauer, someone else from his team, can get up and talk
17 to you about what I've said. And I've got to sit on my hands.
18 Doesn't mean that I agree with anything or everything that
19 they're saying. It's just the rules.

20 When I think about the rebuttal argument, I think
21 about the old movie Pinocchio. You know, Jiminy Cricket sat on
22 Pinocchio's shoulder, whispering, trying to keep him on the
23 straight and narrow. So when he's talking to you in his
24 rebuttal, I just imagine I'm Jiminy Cricket up there, responding
25 with the evidence, the science, the testing that we brought to

1 you.

2 Last thing. It's almost time for you to go back
3 into the jury room, to put on the black robes of justice and do
4 justice and have your verdict speak the truth. Mr. Warshauer is
5 absolutely right. I love that he pointed this out. I love that
6 it's absolutely true that we all stand for you when you come in,
7 including Judge McGlynn, because you're the judges here. You
8 have an overwhelming power but you have an overwhelming
9 responsibility.

10 I recognize that your verdict is going to be
11 difficult, especially if you find in favor of Raymond. It might
12 be the hardest thing you ever do, because these people are nice
13 people. They're sympathetic people. But the evidence doesn't
14 support a verdict in favor of the plaintiffs. This lawsuit is
15 about what is right, what is fair, what is just. Simply put, it
16 would not be right, it would not be fair, it would not be just
17 to hold my client responsible, even a little, for what happened
18 here.

19 That said, I'm confident in our jury system. I'm
20 confident in the facts in the case we presented. I have
21 confidence in you that when you get back in that jury room, you
22 will do the right thing, the fair thing, the just thing, maybe
23 not the easy thing, but you'll do what is right and just and
24 return a verdict in favor of Raymond. Thank you. Thank you,
25 Your Honor.

1 THE COURT: Thank you.

2 All right. Ladies and gentlemen, we still have
3 rebuttal argument and then I have a number of instructions to
4 read to you, so I'm going to give everybody a five-minute break
5 right now. Let's come back at 11:15.

6 (Jury exits at 11:08 a.m.)

7 (Recess from 11:08 a.m. to 11:18 a.m.)

8 (Jury enters at 11:18 a.m.)

9 THE COURT: All right. Please be seated. Thank
10 you.

11 Mr. Warshauer?

12 MR. WARSHAUER: May it please the Court.

13 You know, in the last 45, 50 minutes, Mr. McCoy
14 and I have been accused basically of suborning perjury and
15 Ms. Boone has been accused of being a liar. I ought to tell
16 you, that's the kind of thing that can make me angry. I thought
17 instead of being angry, I thought maybe if I tell you a story,
18 it would get me back centered to where I need to be.

19 It's a story of two farmers, and one farmer has a
20 cabbage patch. And his neighbor's goat eats the cabbage, and he
21 sees the neighbor's goat eat the cabbage. He says, "Neighbor,
22 your goat ate my cabbage." Neighbor says, "I don't have a
23 goat." He says, "Neighbor, I got video of your goat eating my
24 cabbage." "Well, if I did have a goat, it didn't eat your
25 cabbage." "Again, I have a video of your goat eating my

1 cabbage." "Well, I don't have a goat. But if he did eat your
2 cabbage, it made him sick and you owe me money." And that's
3 what we've heard over the last 45 minutes. Just a complete
4 denial of any responsibility at all.

5 But I want to start with this thing that really
6 got my blood boiling. If I could have the presenter, please?

7 You heard the Raymond Corporation's lawyer say to
8 you that Dr. Meyer changed his stripes, that he didn't want a
9 left-foot brake on one machine and he didn't want it on another
10 machine. He knew when he told you that it was a lie. He knew
11 when he told you that it was false. And he did it to distract
12 you from the truth of this case.

13 What Dr. Meyer actually said, and this was
14 Wednesday morning, "Now with regard to the Crown, you -- or even
15 Raymond, you actually want brakes under both feet; correct?"
16 "Pardon me?" "You want brakes under both feet?" "I do, yes."
17 "So whether you pick up your left foot or your right foot, the
18 brake comes on?" "Yes."

19 You know why Dr. Meyer says that? Because he
20 wants this machine to be as safe as possible so that when my
21 friends and family and your friends and family and neighbors go
22 to work, they come back safe. They have the highest chance of
23 that. When we talk about punch presses and keeping our hands
24 out of the way, it's both hands. And both feet could be in
25 danger, and that's why he wants them both on the floor and he

1 wants that machine to react when they're not there, because that
2 makes sense. In fact, 7.20.2, which we never heard him say they
3 complied with, demands that when you leave the operating
4 position, that every single witness agreed is two feet on the
5 floor, that machine should react. And he never said Raymond's
6 forklift does it.

7 And don't you know that if Mike Rogers could have
8 uttered the words "This forklift complies with 7.20.2," he would
9 have done it, and he didn't. Don't you know that if Jason --
10 that if Mr. -- if their company man, the company man who doesn't
11 even know who he works for because he doesn't want to admit the
12 simple truth, that they're not a mom-and-pop company, if he
13 could have said it, he would have said it too. Bob Kerila.

14 So I'm going to spend a couple of minutes talking
15 about the science, because there were experiments and there was
16 science that you saw. You don't need to test whether the left
17 brake works when an entire industry already does it. You don't
18 need to design the right way to do it when you can simply look
19 at the competitors and see an entire industry does it that way.
20 So making someone spend money to test is sort of like the waste
21 of money they wasted with Dr. Rhoades. Yeah, everybody agrees
22 having one pedal is more comfortable than two. I would have
23 stipulated to that.

24 But let's look and see where we got this data.
25 The interaction doesn't happen until the end. Everyone agrees

1 that two witnesses agreed to that. The braking distance comes
2 from testing done by Raymond. That's data. The onset of the
3 braking is Mr. Rogers. We didn't challenge this simple science.
4 We agreed with it, and Dr. Meyer agreed with it. And the fact
5 of the matter is, the brake didn't go on until she was all the
6 way out. But you know what they want you to believe? They want
7 you to believe that what she did is just step out, like they're
8 characters. They're ten people in somebody's office and this
9 young woman who's never been on a forklift.

10 But what did we learn about people who really
11 know about balance? What'd Dr. Jeka say? It's ridiculous to
12 try to duplicate a loss of balance. It is what's called a
13 dynamic event. It would be like watching a NASCAR race and
14 saying, "Okay, this guy's going to get rear-ended, and we know
15 his car's going to spin seven times and land on the roof." No,
16 every time is different.

17 I actually asked Dr. Rodowicz, why is it that
18 when I trip over the same thing, I end up on two sides of the
19 sidewalk? One time, I fell; the other, I don't. Because it's a
20 dynamic event. And as she struggled out, that explains how this
21 forklift came to the left and came towards her foot, as she
22 finally failed in her effort.

23 But we also know this. Using that same math,
24 those same numbers that no one challenges, 5 feet of brakes, 1
25 foot of onset, and the unchallenged truth that at the time of

1 the event, as she lay in a pool of her own blood that was
2 ever-growing, she looked at her coworker and said "I slipped and
3 could not stop," the only reasonable inference is that she had
4 indeed slipped further back and she couldn't stop. Because even
5 Dr. Rodowicz admits, when you're falling to your left, you can't
6 put the brakes on, and unless you can fly, you can't lift your
7 right foot. So those two statements are true and two people
8 heard them.

9 And the reason I didn't give any credence to
10 Dr. Rodowicz is she didn't even consider it. And folks, he
11 accused me of inventing that. Let's look at the real record.
12 The real record is this, made that night. One of our emergency
13 responders, that emergency responder is Rachel Boone, she told
14 us this under oath. Stated she slipped and that the lift would
15 not stop. She slipped and the lift would not stop. That's
16 before any lawyers were involved. She didn't say "I jumped off
17 and it ran over me." She didn't say "I lost control." While
18 she was laying there in the pool of blood, that is the time that
19 she's most likely to be truthful. It's called in the law an
20 excited utterance. And that excited utterance is "I slipped off
21 and it wouldn't stop." Two people heard that. Dr. Rodowicz
22 didn't even want to consider it.

23 At the end of the day, if this had been a Crown,
24 a Jungheinrich, a Mitsubishi, we would not be here. But let's
25 do look back at the pedal, because what they want us to do is

1 ignore the work that Dr. Rodowicz did. All of a sudden, it's
2 not so technically precise now that they see, when we look at it
3 carefully, it actually proves the plaintiff's case. It actually
4 proves the Andersons are right, you see, because that right foot
5 didn't get crushed. It was pushed back like a cowcatcher would
6 push back the cow. The whole point of the guard we want is to
7 push her back. Would she have ended up with a bruised arch?
8 Would she have ended up perhaps worst case scenario with some
9 maybe cracked toes? Maybe.

10 What did Dr. Low tell us? Dr. Low said it was
11 the degloving, the turning of the wheel that ate her foot that
12 caused this amputation. It wasn't that she had a couple of
13 broken toes. He said that was no big deal. At worst, if we see
14 what we see in the bottom right-hand picture, the interaction
15 between her foot and this forklift would have been no big deal.
16 She'd be back at work at a job she loved and would still be the
17 poster child for safety, and would have lost that ten years in a
18 row of never missing a day, because she probably would have
19 taken maybe half a day off because she had a bruised toe.

20 They talk about 60 million hours with no
21 injuries. Not true. They asked Dr. Meyer, "Isn't it true
22 you've earned \$200,000 in Mr. Warshauer's cases?" And what was
23 his answer? "Seven cases like this one." One is too many.
24 Seven is outrageous.

25 But what's really outrageous is a company that

1 comes to you and says "We don't have any injuries," but refuses
2 to count them. Where are their accident reports going? They go
3 to the engineers, who might make the product safer for my
4 neighbors, my friends, my family, and yours? No. It goes to
5 the legal department so that they can be prepared to defend
6 lawsuits. He said it goes to legal department for early
7 litigation warning. They start and prepare their defense before
8 the helicopter leaves to take the woman to the hospital.

9 And then they come in to say "We have 60 million
10 hours with no injuries." You can't say that if you don't look.
11 That's not fair. You can't say you have no injuries when you
12 refuse to ask people like Walmart and FedEx, "How many left-leg
13 crush injuries do you have where people lost their balance like
14 Ms. Anderson and ruined their lives?" How many do we as a
15 community tolerate and let them just say, "We don't have to
16 comply with the standard. We don't have to do what the rest of
17 the industry does, because after all, it's just one lady's leg."

18 You know, he said to you, "Our society needs lift
19 trucks." It does. But not at the expense of safety. There are
20 plenty of brands you can buy that are safer than this one.
21 Maybe not as comfortable. But we need safe lift trucks. And
22 the way we get safe lift trucks is when a community comes
23 together and says to the Raymond Corporation, "Do it right.
24 Just do it right. And quit blaming your -- the users. Take
25 some responsibility."

1 Now they have a new excuse for no guard. People
2 will take it off. You know, that's -- I guess we shouldn't have
3 seatbelts because there are a handful people who hook them
4 behind their seats. Uh-uh. That's not an excuse. It's an
5 excuse. It's not a reason.

6 You know, when we talk about credible
7 witnesses -- and he can call Dr. Meyer names all he wants. But
8 I want you to think about who had to be chastised by the Court
9 for refusing to answer questions. Who was on a mission to lead
10 you down a path? Did it ever happen to Dr. Meyer, Dr. Kerrigan,
11 Dr. Jeka, any of our witnesses? No, because they came to tell
12 the truth. They didn't need to tell a story. They didn't need
13 to refuse to answer.

14 Remember Dr. Rodowicz yesterday? I kept having
15 to -- I'd ask her a question. She just wanted to give you a
16 speech. And I had to say, "Well, I take that as a no" because
17 she didn't want to give you a yes or no, because a yes or no
18 means "Maybe they won't hire me again." Her company that has
19 done so many of these cases, they can't remember, and she can't
20 even remember. But they want to come to you and say, "Oh, we've
21 had 60 million hours with no injuries." That is not true, and
22 that is a lie. And then they say, "We're not calling her a
23 liar. We're just saying she's not truthful."

24 You know, they're really hanging their hat at the
25 end of the day on Dr. Rodowicz. End of the day, it all comes

1 down to her credibility. And you can never have an opinion
2 that's credible or reliable without considering all the data.
3 Do you remember that long list of things I asked her if she
4 considered? "Did you consider this woman's safety history, her
5 skills in operating a forklift, the fact that she didn't but
6 could have applied the brake? If what you say is true, the fact
7 that she could have but didn't apply the foot brake? If what
8 you say is true, the fact that she said she would never jump off
9 a forklift?" "I didn't consider any of that. I didn't consider
10 any of that. I didn't consider any of that." In the computer
11 world, they say garbage in, garbage out.

12 But the one thing that she didn't consider was
13 Reche Boone. Reche Boone didn't have a dog in this fight. I
14 said, "If they wanted to buy you a taco at lunch, would you have
15 met with them and told them the same thing?" "Yeah." "Did
16 Mr. McCoy screw up and not ask about what happened?" I've been
17 giving him a hard time about that for three days, but doesn't
18 change the fact it's been there from the very beginning. They
19 just didn't talk about it. As lawsuits progress, we learn more
20 stuff all the time. But this fact that she slipped has been
21 there from the beginning, and it is a perfect explanation and
22 it's a reasonable inference.

23 I want to switch gears with you and talk about
24 this money.

25 THE COURT: Two minutes.

1 MR. WARSHAUER: Two?

2 \$13 million. If the Mona Lisa, one of the most
3 expensive paintings in the world, was made by one of the great
4 masters, just had a cut in it, somebody would say, "You've
5 damaged a hundred-million-dollar painting." A baseball player
6 gets \$13 million for ten games these days.

7 But I want to leave you with this thought. I
8 want you to go imagine that Lidy's leg sent a letter, her real
9 leg, the one they took from her, sent a letter to her
10 prosthetic. It would go like this:

11 "You don't know how it feels when you are cut
12 from your lifeline like an apple being picked when it isn't
13 fully grown, when you're replaced with hard plastic and metal
14 where bones should be. You probably want to know why she hates
15 you. It's because she had to learn how to walk again, because
16 you can't run like I could, because you can't skate or climb
17 trees like I could, because you can't make her itch like I
18 could, because you remind her of the crush, crush that took me
19 away from her. I was made with her. You were made for her.
20 You took six weeks to be created, and you are plastic. I miss
21 her. Will you tell her that I miss her? Let her know the
22 feeling is mutual. Just tell her goodbye for me."

23 THE COURT: All right. Would you move your
24 easel, Counsel?

25 Ladies and gentlemen of the jury, you have seen

1 and heard all the evidence and arguments of the attorneys. Now
2 I will instruct you on the law. You have two duties as a jury.
3 Your first duty is decide the facts from the evidence in the
4 case. This is your job and yours alone. Your second duty is to
5 apply the law that I give you to the facts. You must follow
6 these instructions even if you disagree with them. Each of the
7 instructions is important and you must follow all of them.

8 Perform these duties fairly and impartially. You
9 should not be influenced by anyone's race, color, religion,
10 national ancestry, or sex. It is your duty to resolve this
11 case, determining the facts based on the evidence, and follow
12 the law as given in instructions. Your verdict must not be
13 based on speculation, prejudice, or sympathy. Nothing I say
14 now, nothing I said or did during the trial is meant to indicate
15 any opinion on my part about what the facts are and about what
16 your verdict should be.

17 During this trial, I have asked witnesses a
18 question myself. Do not assume that because I asked questions,
19 I hold any opinion on the matters I asked about or on what the
20 outcome of the case should be.

21 In this case, Raymond, the defendant, is a
22 corporation. All parties are equal before the law. A
23 corporation is entitled to the same fair consideration that you
24 should give any individual person.

25 The evidence consists of the testimony of the

1 witnesses, the exhibits admitted into evidence, and
2 stipulations. A stipulation is an agreement between both
3 parties that certain facts are true.

4 I have taken judicial notice of certain facts.
5 You must accept those facts as proven. Here are the facts I've
6 taken judicial notice of: On July 29th, 2017, a lift truck
7 accident occurred at the FedEx Supply Chain warehouse in
8 Effingham, Illinois, involving Adelaida Anderson and a
9 Model 4250 standup counterbalance lift truck manufactured by the
10 defendant Raymond.

11 Mrs. Anderson was operating the lift truck at the
12 time of the accident. Mrs. Anderson's left foot made contact
13 with the left truck steer wheel outside the operator's
14 compartment. Mrs. Anderson received a serious bodily injury as
15 a result of this accident. There have been no substantial
16 changes to the lift truck from the time it left Raymond's
17 control until the time of the injury.

18 During the trial, certain testimony was presented
19 to you by video recording. You should give this testimony the
20 same consideration you would give had the witness appeared and
21 testified here in court.

22 Certain things are not to be considered as
23 evidence. I will list them for you. First, if I told you to
24 disregard any testimony or exhibits or struck any testimony or
25 exhibits from the record, such testimony or exhibits are not

1 evidence and must not be considered.

2 Second, anything that you may have seen or heard
3 outside the courtroom is not evidence and must be entirely
4 disregarded.

5 Third, questions and objections or comments by
6 the lawyers are not evidence. Lawyers have a duty to object
7 when they believe a question is improper. You should not be
8 influenced by any objection and you should not infer from my
9 rulings that I have -- of you as to how you should decide the
10 case.

11 Fourth, the lawyers' opening statements and
12 closing arguments to you are not evidence. Their purpose is to
13 discuss the issues and the evidence. If the evidence as you
14 remember it differs from what the lawyers said, your memory is
15 what counts.

16 Any notes you have taken during this trial are
17 not -- only aides to your memory. The notes are not evidence.
18 I'm sorry. Any notes you have taken during the trial are only
19 aides to your memory. The notes are not evidence. If you have
20 not taken notes, you should rely on your independent
21 recollection of the evidence and not be unduly influenced by the
22 notes of other jurors. Notes are not entitled to any greater
23 weight than the recollection or impression of each juror about
24 the testimony.

25 In determining whether any fact has been proven,

1 you should consider all the evidence bearing on the question,
2 regardless of who introduced it. You should use your common
3 sense in weighing the evidence and consider the evidence in
4 light of your own observations in life.

5 In our lives, we often look at one fact and
6 conclude from it another fact exists. In law, we call this an
7 inference. A jury is allowed to make reasonable inferences.
8 Any inference you make must be reasonable and must be based on
9 the evidence in the case.

10 You may have heard the phrases "direct evidence"
11 and "circumstantial evidence." Direct evidence is proof that
12 does not require an inference, such as testimony of someone who
13 claimed to have had personal knowledge of the fact.
14 Circumstantial evidence is proof of a fact or a series of facts
15 that tends to show that some other fact is true. An example of
16 direct evidence that it's -- that it is raining is testimony
17 from a witness who says, "I was outside a minute ago and I saw
18 it raining." Circumstantial evidence that it is raining is the
19 observation of someone entering a room carrying a wet umbrella.

20 The law makes no distinction between the weight
21 to be given to either direct or circumstantial evidence. You
22 should decide how much weight to give to any evidence. In
23 reaching your verdict, you should consider all the evidence in
24 the case, including circumstantial evidence.

25 You must decide whether the testimony of each

1 witness is truthful and accurate, in part, in whole, or not at
2 all. You may also decide what weight, if any, you give to the
3 testimony of each witness.

4 In evaluating the testimony of any witness, you
5 may consider among other things the ability and opportunity the
6 witness had to see, hear, or know the things the witness
7 testified about; the witness's memory; any interest, bias, or
8 prejudice that the witness may have; the witness's intelligence;
9 the manner of the witness while testifying; and the
10 reasonableness of the witness's testimony in light of all the
11 evidence in the case.

12 You may consider statements given by the parties
13 or witnesses under oath before trial as evidence of the truth of
14 what they said in the earlier statements, as well as in deciding
15 what weight to give their testimony. If you decide that before
16 the trial, one of these witnesses made a statement not under
17 oath or acted in a manner that is inconsistent with his or her
18 testimony here in court, you may consider the earlier statement
19 only in deciding whether his testimony here in court was true
20 and what weight to give to his or her testimony here in court.

21 In considering a prior inconsistent statement or
22 conduct, you should consider whether it was simply an innocent
23 error or an intentional falsehood and whether it concerns an
24 important fact or an unimportant detail.

25 It is proper for lawyers to meet with any witness

1 in preparation for trial. You may find that testimony of one
2 witness or a few witnesses more persuasive than the testimony of
3 a large number. You need not accept the testimony of the larger
4 number of witnesses.

5 The law does not require any party to call as a
6 witness every person who might have knowledge of the facts
7 relating to this trial. Similarly, the law does not require any
8 party to present all exhibits or as exhibits all papers and
9 things mentioned during the trial.

10 You've heard witnesses give opinions about
11 matters requiring special knowledge and skill. You should judge
12 this testimony the same way you would judge the testimony of any
13 other witness. The fact that such person has given an opinion
14 does not mean that you're required to accept it. Give the
15 testimony whatever weight you think it deserves, considering the
16 reasons given for the opinion, the witness's qualifications, and
17 all the other evidence in the case.

18 If you decide that the Andersons have proven all
19 the propositions of their case, then it is not a defense that
20 the condition of the forklift could not have been discovered by
21 Raymond or that care was used in the manufacturing of the
22 product.

23 When I use the expression "unreasonably
24 dangerous," I mean that the risk of danger inherent in design
25 outweighs the benefits of the design when the product is put to

1 use that is reasonably foreseeable, considering the nature and
2 function of the product.

3 Adelaida Anderson claims that she was injured
4 while operating the Model 4250 standup counterbalance forklift
5 truck manufactured by the Raymond Corporation. She claims there
6 existed in the Model 4250 forklift at the time it left the
7 control of the Raymond Corporation a condition which made the
8 Model 4250 forklift unreasonably dangerous in one or more of the
9 following respects: One, that an operator compartment design
10 that did not apply the brakes when Mr. Anderson's -- I'm
11 sorry -- Mrs. Anderson's left foot went out of the operating
12 compartment, and two, a steer wheel design that did not have a
13 guard to prevent Mrs. Anderson's foot and leg from being run
14 over by the forklift.

15 Jeff Anderson claims that he sustained damages
16 for loss of consortium because of the injuries to his wife that
17 were caused by one or more of the following dangerous conditions
18 of the forklift.

19 The Raymond Corporation denies that any of those
20 two claimed conditions of the Model 4250 forklift made it
21 unreasonably safe, that any of the two claimed conditions of the
22 Model 4250 forklift was a proximate cause of either Plaintiff's
23 injuries and that either Plaintiff was injured to the extent
24 they claim.

25 The Raymond Corporation also claims that Adelaida

1 Anderson failed to exercise ordinary care for her own safety in
2 the operation of the forklift, in that she failed to follow the
3 Raymond Corporation's instructions and the training she received
4 in one or more of the following ways: That she failed to keep
5 the forklift under proper control and she left the confines of
6 the operating compartment while the forklift was still moving.

7 When I say a particular party must prove
8 something by a preponderance of the evidence, or when I use the
9 expression "if you find" or "if you decide," this is what I
10 mean. When you have considered all the evidence, you must be
11 persuaded that it is more probably true than not true.

12 Adelaida Anderson has the burden of proving each
13 of the following propositions as to any of the -- any one of the
14 conditions claimed by her: First, that the condition claimed by
15 her as stated to you in these instructions existed in the
16 Model 4250 forklift; second, that the condition made the
17 Model 4250 forklift unreasonably dangerous; third, that the
18 condition existed at the time the Model 4250 forklift left the
19 control of the Raymond Corporation; fourth, that she, Adelaida
20 Anderson, was injured; fifth, that the condition of the
21 Model 4250 forklift was a proximate cause of those injuries.

22 If you find in your consideration of all the
23 evidence that any of these propositions have not been proven,
24 then your verdict should be for the Raymond Corporation. But if
25 on the other hand you find from your consideration of all the

1 evidence that each of these propositions has been proved, then
2 you must consider the Raymond Corporation's claim that Adelaida
3 Anderson failed to exercise ordinary care for her own safety
4 while operating the Model 4250 forklift.

5 As to that claim, the Raymond Corporation has the
6 burden to prove the following, that Adelaida Anderson failed to
7 follow the Raymond Corporation's instructions and the training
8 she received in one or more of the following ways: She failed
9 to keep the forklift under proper control and she left the
10 confines of the operating compartment while the forklift was
11 still moving, and that Ms. Anderson's failure to follow the
12 Raymond Corporation's instructions and training she received in
13 one or both of the ways claimed by the Raymond Corporation was
14 the proximate -- or was a proximate cause of her injuries.

15 If you find from your consideration of all the
16 evidence that Adelaida Anderson has proved all propositions
17 required of her and that Raymond Corporation has not proved all
18 the propositions it is required to prove, then your verdict
19 should be for Adelaida Anderson.

20 If you find from your consideration of all the
21 evidence that the Raymond Corporation has proved all the
22 propositions it is required to prove, and if you further find
23 that Adelaida Anderson's fault in failing to exercise ordinary
24 care for her own safety was more than 50 percent of the total
25 proximate cause of the injuries or damages for which the

1 recovery is sought, your verdict should be for the Raymond
2 Corporation.

3 If you find from your consideration after all the
4 evidence that Adelaida Anderson proved all the propositions
5 required of her, and that the Raymond Corporation proved all the
6 propositions it's required to prove, you will apportion the
7 percentage of the proximate cause attributed -- attributable to
8 Adelaida Anderson and the Raymond Corporation.

9 If you find that Adelaida Anderson's failure to
10 exercise ordinary care for her own safety was more than
11 50 percent of the total proximate cause of the injuries for
12 which recovery is sought, then your verdict should be for the
13 Raymond Corporation.

14 If you find that Ms. Anderson's failure to
15 exercise ordinary care for her own safety was 50 percent or less
16 of the total proximate cause of her injuries for which recovery
17 is sought, then your verdict should be for Adelaida Anderson and
18 you will determine the damages she sustained from the accident,
19 reduced by the percentage of her fault to exercise ordinary care
20 for her own safety in the operation of the forklift.

21 If you find that Adelaida Anderson's entitled to
22 recover damages from the Raymond Corporation, you must also
23 consider whether her husband Jeff Anderson has proved that he's
24 entitled to damages for loss of consortium, reduced by the
25 percentage of her fault for failure to exercise ordinary care

1 for her own safety in the operation of the forklift.

2 If you find that Adelaida Anderson's injury was
3 proximately caused by unreasonably dangerous condition of the
4 forklift, and if you also find that she failed to exercise
5 ordinary care for her own safety in operating the forklift, and
6 if you further find that her own fault in failing to exercise
7 ordinary care for her own safety in operating the forklift was
8 50 percent or less of the total proximate cause of the injury
9 for which recovery is sought, then you must determine the amount
10 of damages to be awarded by you as follows.

11 First, you'll determine what portion of
12 percentage of fault is attributable to Adelaida Anderson's
13 failure to exercise ordinary care and in operation of the
14 forklift by not following the Raymond Corporation's instructions
15 and the training she received in one or more of the following
16 ways claimed by the Raymond Corporation: One, that she failed
17 to keep the forklift under control; two, she left the confines
18 of the operating compartment while the forklift was still
19 moving. What percentage of fault is attributable to the Raymond
20 Corporation for an unreasonably dangerous condition of the
21 forklift?

22 Second, you will determine the total amount of
23 damages to which Adelaida Anderson would be entitled under the
24 Court's instruction if Adelaida Anderson had exercised ordinary
25 care for her own safety in the operating of the forklift.

1 Third, you will reduce the total amount of
2 Adelaida Anderson's damages by the percentage of her fault for
3 her failure to exercise ordinary care for her own safety in
4 operating the forklift.

5 Fourth, you will determine if Jeff Anderson's
6 proved he has sustained damages that were proximately caused by
7 the accident.

8 Fifth, if you find that Jeff Anderson has proven
9 that he has sustained damages that were proximately caused by
10 the accident, you will determine the total amount of damages to
11 which Jeff Anderson would be entitled under the Court's
12 instruction if Adelaida Anderson had exercised ordinary care for
13 her own safety in operating the forklift.

14 Sixth, you will reduce the total amount of Jeff
15 Anderson's damages by the percentage of Adelaida Anderson's
16 fault for her failure to exercise ordinary care and for her own
17 safety in operating the forklift.

18 Now you got all that? You will be given multiple
19 copies of these instructions that will be available to you. But
20 I digress.

21 It was the duty of Adelaida Anderson before and
22 at the time she was injured to use ordinary care for her own
23 safety. Adelaida Anderson was contributory negligent if she
24 failed to use ordinary care for her own safety while operating
25 the forklift, and her failure to use such ordinary care was a

1 proximate cause of her injury. Adelaida Anderson's contributory
2 negligence, if any, which is 50 percent or less of the total
3 proximate cause of the injuries or damages for which recovery's
4 sought, does not bar her recovery.

5 However, the total amount of damages to which she
6 and her husband Jeff Anderson would otherwise be entitled is
7 reduced in proportion to the amount of Adelaida Anderson's
8 negligence. This is known as comparative negligence.

9 If Adelaida Anderson's contributory negligence is
10 more than 50 percent of the total proximate cause of injuries
11 for which recovery is sought, the Raymond Corporation shall be
12 found not liable.

13 So when I use the expression "proximate cause," I
14 mean a cause that as a natural and ordinary course of events
15 produced the plaintiff's injury. It need not be the only cause,
16 nor the last or nearest. It is sufficient if it combines with
17 other -- another cause resulting in the injury.

18 When I use the words "ordinary care," I mean the
19 care a reasonably careful person would use under the
20 circumstances similar to those shown by the evidence. The law
21 does not say how a reasonably careful person would act under
22 those circumstances. That's for you to decide.

23 If you decide for the Andersons on the question
24 of liability, then you must then fix the amount of money which
25 will reasonably and fairly compensate them for all the following

1 elements of damages proved by the preponderance of the evidence
2 to have resulted from an unreasonably dangerous condition of the
3 Model 4250 forklift. You should also take into consideration
4 the nature, extent, and the duration of the injury. You should
5 consider the disfigurement resulting from this injury; the loss
6 of normal life experienced and reasonably certain to be
7 experienced in the future; the pain and suffering experienced
8 and reasonably certain to be experienced in the future as a
9 result of these injuries; the emotional distress experienced and
10 reasonably certain to be experienced in the future; the
11 reasonable expense of necessary medical care, treatment,
12 services received, and the present cash value of the reasonable
13 expenses of medical care, treatment, and services reasonably
14 certain to be received in the future; the value of earnings lost
15 and the present cash value of the earnings reasonably certain to
16 be lost in the future; and the reasonable expense of necessary
17 help and the present cash value of such expenses reasonably
18 certain to be required in the future. Whether any of these
19 elements of damages have been proven by the evidence is for you
20 to decide.

21 When I use the expression "loss of normal life,"
22 I mean the temporary or permanent diminished ability to enjoy
23 life. That includes a person's inability to pursue the
24 pleasurable aspects of life.

25 If you find the Andersons are entitled to damages

1 arising in the future because of injuries, future medical
2 expenses, loss of earning, loss of society or loss of
3 companionship, sexual relations, you must determine the amount
4 of these damages which will arise in the future. If these
5 damages are of a continuing nature, you may consider how long
6 they will continue. If these damages are permanent in nature,
7 then in computing these damages, you must consider how long the
8 Andersons are likely to live.

9 With respect to loss of future earnings, you may
10 consider that some people work all their lives and others do
11 not, that a person's earnings may remain the same, they may
12 increase or they may decrease in the future.

13 In computing the damages arising in the future
14 because of future medical expenses or loss of future earnings,
15 you must determine the present cash value. Present cash value
16 means the sum of money needed now which, when added to what the
17 sum may reasonably be expected to earn in the future, will equal
18 the amount of the expenses and earnings at the time of the
19 future -- or time in the future when the expenses must be paid
20 and the earnings would have been received.

21 Damages for pain and suffering, loss of normal
22 life, disfigurement, loss of society, companionship, and sexual
23 relations are not reduced to present cash value. According to a
24 table of mortality in evidence, the life expectancy of a woman
25 aged 54 years is 27.22 more years. This figure is not

1 conclusive. It is the average life expectancy of women who have
2 reached the age of 54. It may be considered by you in
3 connection with other evidence relating to the probable life
4 expectancy of Adelaida Anderson in this case, including evidence
5 of her occupation, health, habits, and other activities, bearing
6 in mind that some persons live longer and some persons less than
7 average.

8 If you decide for the Andersons on the question
9 of liability, you must fix the amount of money which would
10 reasonably and fairly compensate Jeff Anderson for any of the
11 following elements of damages arising out of injuries to his
12 wife Adelaida Anderson, proved by the evidence to a result in
13 unreasonably dangerous condition in the Model 4250 Raymond
14 forklift.

15 Here are the elements of damages you should
16 consider: The reasonable value of services of his wife of which
17 he had been deprived and the present cash value of services of
18 his wife he is reasonably certain to be deprived of in the
19 future; the reasonable value of the society, companionship, and
20 sexual relations with his wife of which he has been deprived and
21 the society, companionship, and sexual relationship with his
22 wife of which he is reasonably certain to be deprived in the
23 future. Whether any of these elements of damages have been
24 proved by a preponderance of the evidence is for you to decide.

25 When I use the term "society" in these

1 instructions, I mean the mutual benefit that each family member
2 receives from the other's continued existence, including love,
3 affection, care, attention, companionship, comfort, guide and
4 protection.

5 Upon retiring to the jury room, you must select a
6 presiding juror. The presiding juror will preside over your
7 deliberations, and you -- and will be your representative here
8 in court.

9 A verdict form has been prepared for you. The
10 verdict form asks you various questions. You will discuss these
11 questions, and when you have reached unanimous agreement on the
12 answer to a question, you will mark the appropriate answer and
13 follow the remaining instructions on the verdict.

14 I do not anticipate that you will need to
15 communicate with me. If you do need to communicate with me, the
16 only proper way is in writing. The writing must be signed by
17 the presiding juror, and if he or she is unwilling to do so by
18 some other juror, the writing should be given to the marshal who
19 will give it to me. I will respond in writing or by having you
20 return to the courtroom so that I can respond orally. If you do
21 not communicate with me, you should not indicate in your note --
22 I'm sorry. If you do communicate with me, you should not
23 indicate in your note what your numerical division is, if any.

24 All right. Those are the instructions. We'll
25 send you back.

1 We need to swear in this jury; right?

2 THE COURTROOM DEPUTY: I need to swear in the
3 CSO.

4 THE COURT: All right. We do have lunch for you.
5 (Courtroom security officer sworn.)

6 THE COURT: Thank you, ladies and gentlemen. You
7 may retire to the jury room and contemplate your verdict.

8 THE COURTROOM DEPUTY: He just advised that he's
9 leaving now, so I'm going to swear him in real quick. Sorry.

10 (Courtroom security officer sworn.)

11 THE COURT: Now you may go.

12 (Jury exits at 12:05 p.m.)

13 (Recess from 12:05 p.m. to 1:51 p.m.)

14 (Jury enters at 1:51 p.m.)

15 THE COURT: All right. Please be seated.

16 All right. We are on the record in Anderson v.
17 Raymond Corporation. Has the jury reached a verdict?

18 FOREPERSON: Yes, we have, Your Honor.

19 THE COURT: Would you hand the verdict to my
20 clerk?

21 In the matter of Anderson v. Raymond Corporation,
22 verdict form: "Do you find that the forklift manufactured by
23 Raymond Corporation that was being operated by Adelaida Anderson
24 when she was injured on July 29th, 2017, at the FedEx warehouse
25 in Effingham, Illinois, contained an unreasonably dangerous

1 condition as claimed by the plaintiff that existed at the time
2 it left the control of the Raymond Corporation?"

3 And the answer is no.

4 All right. Juror Number 1, is this your verdict?

5 JUROR NO. 1: Yes, Your Honor.

6 THE COURT: All right. Juror Number 2, is this
7 your verdict?

8 JUROR NO. 2: Yes, Your Honor.

9 THE COURT: Juror Number 3, is this your verdict?

10 JUROR NO. 3: Yes, Your Honor.

11 THE COURT: Juror Number 4, who's listed as the
12 presiding juror, is this your verdict?

13 JUROR NO. 4: Yes, Your Honor.

14 THE COURT: All right. And this is your
15 verdict -- what's your Juror Number?

16 JUROR NO. 5: Yes, Your Honor.

17 THE COURT: Juror Number 5.

18 Juror Number 6, is this your verdict?

19 JUROR NO. 7: I'm 7.

20 THE COURT: Juror Number 7, is this your verdict?

21 JUROR NO. 7: Yes, sir.

22 THE COURT: All right. And the alternate
23 deliberated with you, and you've signed the verdict form as
24 well; is that correct?

25 JUROR: I did not.

1 THE COURT: You did not. Okay. All right.

2 Ladies and gentlemen, this will conclude your
3 service. I will enter judgment on your verdict. I think that
4 they have a questionnaire for you that they want you to fill out
5 that you'll be given before you leave.

6 You'll remember the admonitions that I gave to
7 you about not being able to talk to anybody about this case.
8 Now that you've reached your verdict, you may talk to others
9 about this case. You may talk to the lawyers about it. You may
10 talk to the parties about it. You may talk to me about it.

11 Anything on behalf of the plaintiff?

12 MR. WARSHAUER: No, sir.

13 THE COURT: Anything for the defense?

14 MR. LoCOCO: No, Your Honor. Thank you.

15 THE COURT: All right. I'll hand this to the
16 clerk. I'm sure we have some stuff back for you, so if you'll
17 go back in the jury room, we'll get some matters before you, and
18 you're free to leave or free to stay. All right.

19 (Jury exits at 1:55 p.m.)

20 THE COURT: All right. Is there anything that
21 needs to be taken up outside -- the jury has left the room.
22 Plaintiff have anything they need to take up with the Court?

23 MR. WARSHAUER: No, sir.

24 THE COURT: Okay. Anything for defense?

25 MR. LoCOCO: No, Your Honor.

1 THE COURT: Thank you. We are adjourned.

2 (Proceedings concluded at 1:55 p.m.)

3

4 **COURT REPORTER'S CERTIFICATE**

5 I certify that the foregoing is a correct
6 transcript from the record of proceedings in the above-entitled
7 matter.

8 Dated this 21st day of December, 2021

9 /s/ Hannah Jagler

10 _____
11 Hannah Jagler, RMR, CRR, FCRR
12 Official Court Reporter
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